

# FAREHAM

## BOROUGH COUNCIL

**TOWN AND COUNTRY PLANNING ACT, 1990**

**SECTION 78 APPEAL**

**WRITTEN REPRESENTATIONS**

**Statement of Case**

**On behalf of**

**Fareham Borough Council**

**(April 2021)**

**Appeal by:** R G O M

**Appeal Site:** Land at 21 Burr ridge Road, Burr ridge, Fareham, SO31 1BY

**Appeal Proposal:** Residential development of 4 self-build dwellings, amenity areas with access off Burr ridge Road (amended scheme to P/18/1252/FP)

**Planning Inspectorate Ref:** APP/A1720/W/20/3264952

**Local Planning Authority Ref:** P/20/1007/FP

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## **1.0 The Appeal Site and its Surroundings**

- 1.1 The appeal site is located within the defined countryside and is not located close to or adjacent to the existing defined urban area. The site is located on the southern side of Burridge Road, which comprises an existing ribbon of residential development that extends westwards on the western side of Botley Road (B3051), which connects Botley (to the northwest) to the settlements of the Western Wards (Locks Heath, Park Gate, Warsash, Sarisbury Green, Whiteley and Titchfield Common) and the M27 to the east and southeast. Burridge is a small village comprising limited services and facilities, formed along the Botley Road.
- 1.2 The appeal site is located in a backland position, to the rear of 23, 25, 27 and 29 Burridge Road, and to the west of 21 and 21a (the annex to 21) Burridge Road. The site is accessed via the existing single track access road serving 21/21a Burridge Road, and is situated between 19 and 23 Burridge Road.
- 1.3 The position of 21/21a Burridge Road (to the immediate east of the site) is situated on an elevated position, and the ground level drops sharply to the west beyond the raised graveled parking area that serves 21/21a Burridge Road. Beyond the slope, the western part of the site is more level, and currently forms the lawned garden area of 21 Burridge Road. The site's boundaries are largely formed by mature trees and hedging, characteristic of the rural nature of the site.
- 1.4 Burridge village contains limited services and facilities, which Swanwick Station located approximately 2.4km away (to the south), and Whiteley Shopping Centre located 2.5km away (to the east).
- 1.5 The appeal site lies within 5.6km of the Solent and Southampton Water Special Protection Area (SPA), where there is a requirement to provide appropriate mitigation against the provision of additional residential development within this area. Additionally, due to the proximity of the site to the Solent and Southampton Water SPA, the Solent Maritime Special Area of Conservation (SAC), the Solent and Dorset Coast SPA, the Portsmouth Harbour SPA and the Solent and Isle of Wight Lagoons SAC (collectively known as the Protected sites around The Solent), there is a requirement to ensure no likely significant effect on the integrity of these sites as a result of the development. Further consideration of these matters is set out later in this report.

## 2.0 Description of Proposed Development

- 2.1 The appeal, submitted as a non-determination of the planning application is in regard to the construction of four large 4 and 5-bed detached chalet bungalows, set in landscaped plots with car parking provision for the individual houses, access roads to serve the new dwellings and 21/21a Burr ridge Road. The scheme is being put forward as self-build dwellings.
- 2.2 The proposal incorporates variations to the four house types, all incorporating 4 to 5 bedrooms within the roof space at first floor level, with kitchen/diners, living room and family rooms at ground floor levels. The dwellings would comprise integral or detached double garages.
- 2.3 The application was registered 8 September 2020 and notification that the appeal had been submitted was received 11 December 2020. Officers presented the application proposal to the Planning Committee on 20 January 2021 for the Committee to agree the reasons for refusal had the Council the opportunity to determine the application. The Planning Committee resolved to refuse the application for the following reasons:

*'The development would be contrary to Policies CS2, CS6, CS14 and CS17 of the adopted Fareham Borough Core Strategy 2011 and Policies DSP1, DSP2, DSP3, DSP6, DSP13, DSP15 and DSP40 of the adopted Local Plan Part 2: Development Sites and Policies Plan, and is unacceptable in that:*

- i. the provision of dwellings in this location would be contrary to adopted Local Plan policies which seek to prevent residential development in the countryside. Further, the development would not be sustainably located adjacent to or well integrated with the neighbouring settlement area;*
- ii. the introduction of dwellings in this location would fail to respond positively to and be respectful of the key characteristics of the area, particularly its predominantly undeveloped, backland location, which would be out of character with the prevailing pattern of development in the area;*
- iii. as a result of the poor layout design, the proposal would result in an excessive distance for refuse/recycling bins to be taken to and from the proposed properties, to the detriment of future residents;*

- iv. *insufficient information has been provided to adequately demonstrate that no harm would be caused to features of ecological importance on and surrounding the site and protected species;*
- v. *the proposal would have likely adverse effects on the integrity of European Protected Sites in combination with other developments due to the additional generation of nutrients entering the water environment and the lack of appropriate and appropriately secured mitigation;*
- vi. *in the absence of a legal agreement to secure such, the proposal would fail to provide satisfactory mitigation of the ‘in combination’ effects that the proposed increase in residential units on the site would cause through increased recreational disturbance on the Solent and Southampton Waters Special Protection Area and the Portsmouth Harbour Special Protection Area.’*

2.5 A copy of the Committee Report which includes the reasons for refusal is attached at Appendix B to this Statement.

### **3.0 Relevant Planning History of the Appeal Site**

- 3.1 Planning permission was refused on this site in April 2019 for the construction of six detached dwellings (Application P/18/1252/FP), and the subsequent appeal was dismissed 21 April 2020 (APP/L1720/W/19/3235706). A copy of the Appeal Decision Notice is attached at Appendix C. Further consideration of this appeal decision is set out later in this report.
- 3.2 However, in addition to the dismissed appeal at this site, it is important to highlight that several planning applications and appeals have also been considered on adjoining and nearby sites along Burrridge Road, at 17 Burrridge Road, 35 Burrridge Road and 77 Burrridge Road. All these development proposals, set out further below, comprise applications for new residential developments along backland sites from properties fronting Burrridge Road. However, both 17 Burrridge Road and 35 Burrridge Road sought to obtain access from Green Lane (a single unmade track running parallel with Burrridge Road) to the south of the site.
- 3.2 A refused application and dismissed appeal at 17 Burrridge Road sought planning permission for a detached two storey dwelling, with attached one-bed tourist unit. The site is located directly south of the appeal site. The application, reference P/17/1321/FP (APP/A1720/W/18/3197659) was dismissed on 14 November 2018 due to the impact the development would have on the rural setting of the site. A copy of the Appeal Decision is attached at Appendix D of this Statement.
- 3.3 A refused application and dismissed appealed at 35 Burrridge Road sought planning permission for a bespoke semi-subterranean 5-bedroom single storey dwelling on land to the rear of 35 Burrridge Road. The site is located to the southwest of the appeal site. The application, reference P/18/1331/FP (APP/A1720/W/19/3226088) was dismissed on 11 December 2019 due to the impact the development would have on the character and appearance of the surrounding area. A copy of the Appeal Decision is attached at Appendix E of this Statement.
- 3.4 A refused application and dismissed appeal scheme at 77 Burrridge Road sought planning permission for a detached two storey dwelling to the rear of an existing gypsy pitch which fronts Burrridge Road. The application, reference P/17/1514/FP (APP/A1720/W/18/3209865) was dismissed on 18 November 2019 due to backland nature of the proposal, which would be incongruous and therefore harmful to the character of the area. A copy of the Appeal Decision is attached at Appendix F of this Statement.

## 4.0 Local and National Planning Policy

4.1 The revised National Planning Policy Framework was published on February 2019.

### **National Planning Policy Framework 2019**

4.2 The revised NPPF was published February 2019 and updates the 2012 and 2018 policy advice. The overarching purpose of the planning system remains unchanged and sets out in paragraph 7 that it must contribute towards the achievement of sustainable development. The three overarching objectives remain, and set out in paragraph 8 state:

*'a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*

*b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*

*c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.'*

4.3 Paragraph 11 expands further upon this theme stating that plans and decisions should apply a presumption in favour of sustainable. In terms of decision making this is meaning is twofold:

- Approving development proposals that accord with the development plan; and,
- Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

*'the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework when taken as a whole.'*

4.4 Paragraph 79 of the NPPF specifically addresses new dwellings in the countryside stating that:

'Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

- a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
- b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
- c) the development would re-use redundant or disused buildings and enhance its immediate setting;
- d) the development would involve the subdivision of an existing residential dwelling; or,
- e) the design is of exceptional quality, in that it:
  - is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and,
  - would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

4.5 Paragraph 108 sets out that development proposals should ensure that, a safe and suitable access to the site can be achieved for all users, and any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

4.6 As stated above, the presumption in favour of sustainable development is set out in paragraph 11, however, where sites require an appropriate assessment because of the potential impact on habitat sites, the presumption in favour of sustainable development does not apply unless that appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats sites (paragraph 177 states). The impact of the development on the Solent Waters Special Protection Area was a reason for refusal. However, the

impact of the development from recreational disturbance can be readily mitigated in accordance with the Council's Adopted Solent Recreation Mitigation Partnership Strategy (SRMP – attached at Appendix G). It is acknowledged that the appellant has stated in their Statement of Case that they are willing to make the necessary contribution, but no formal agreement has been received to secure this.

- 4.7 In addition, and further to the recreational disturbance issue, the matter of water quality impact and air quality impact has also been highlighted as a significant effect on the protected sites by Natural England. The Council is aware that the appellant has purchased nitrate mitigation credits to address this issue from a re-wilding scheme on the Isle of Wight at Little Duxmore Farm by the Hampshire and Isle of Wight Wildlife Trust.
- 4.8 The Planning Inspectorate in this instance is the competent authority who will need to undertake an appropriate assessment to determine if the mitigation addresses the likely impact. This matter is discussed further later in the Statement.

#### **Fareham Borough Development Plan**

- 4.9 The Fareham Borough Development Plan consists of:
- Fareham Local Development Plan: Shaping Fareham's Future, Core Strategy 2011
  - Fareham Borough Local Plan Part 2: Development Sites and Policies 2015
  - Fareham Borough Local Plan Part 3: Welborne Plan (however, this plan is not relevant to the appeal scheme)

#### **Fareham Local Development Plan: Shaping Fareham's Future, Core Strategy 2011**

- 4.10 The policies that relate to the appeal proposal within this document are:

CS2	Housing Provision
CS6	The Development Strategy
CS14	Development outside Settlements
CS17	High Quality Design

- 4.11 Policy CS2 of the Adopted Core Strategy highlights how the Council will achieve the delivery of housing up to 2016.

- 4.12 Policy CS6 of the Adopted Core Strategy highlights that priority should be given to the reuse of previously development land within the urban area.
- 4.13 Policy CS14 which specifically addresses development outside of the urban settlements stating:

*'Built development on land outside of the defined urban settlements will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Accessible forms of development will include that essential of agriculture, forestry, horticulture and required infrastructure. The conversion of existing buildings will be favoured. Replacement buildings must reduce the impact of development and be grouped with other existing buildings, where possible...'*

- 4.14 Policy CS17 requires proposals to *'respond positively to and be respectful of the key characteristics of the area, including heritage assets, landscape, scale, form, spaciousness and use of external materials'*.

## **Fareham Borough Local Plan Part 2: Development Sites and Policies 2015**

- 4.15 The policies that relate to the appeal proposal within this document are:

- DSP1 Sustainable Development
- DSP2 Environmental Impact
- DSP3 Impact on Living Conditions
- DSP6 New residential development outside of the defined urban settlement boundaries
- DSP13 Nature Conservation
- DSP15 Recreational Disturbance on the Solent Special Protection Areas
- DSP40 Housing Allocations

- 4.16 Policy DSP1 addresses the Councils stance on sustainable development echoing that of the NPPF 2012.
- 4.17 Policy DSP2 seeks to ensure that developments should not, individually or cumulatively have a significant adverse impact, by reason of noise, heat, liquids, vibration, light or air pollution on neighbouring development or adjoining land. Policy DSP3 seeks to ensure no unacceptable adverse impact upon living conditions of neighbouring occupiers by way of loss of sunlight, daylight, outlook and/or privacy.

- 4.18 Policy DSP6 clearly states that *'there will be a presumption against new residential development outside of the defined urban settlement boundaries'*.
- 4.19 Policy DSP13 addresses the impact of development on ecology and ecologically sensitive areas.
- 4.20 DSP15 highlights the Solent Recreational Mitigation Strategy.
- 4.21 DSP40 lays out the requirements of the Council in the event that a five year housing land supply cannot be demonstrated. It states that additional housing sites, outside the urban area boundary, may be permitted where all the following criteria are met:
- 'i) The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;*
  - 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 to minimise any adverse impact on the countryside and, if relevant, the strategic gaps,*
  - iv) It can be demonstrated that the proposal is deliverable in the short term; and*
  - v) The proposal would not have any unacceptable environmental, amenity or traffic implications.'*

#### **Residential Car and Cycle Parking Standards Supplementary Planning Document 2009**

- 4.22 This document sets out the key requirements for parking within Fareham Borough.

#### **Design Guidance Supplementary Planning Document 2015**

- 4.23 This document set out the design guidance for the Borough. Page 1 highlights the policy that relates to design. Pages 8 and 9 highlight the material planning considerations when looking at new dwellings.

## 5.0 The Council's Case

5.1 The planning application was considered by the Planning Committee, who agreed that had the Council determined the application, it would have been refused for the following reasons:

*'The development would be contrary to Policies CS2, CS6, CS14 and CS17 of the adopted Fareham Borough Core Strategy 2011 and Policies DSP1, DSP2, DSP3, DSP6, DSP13, DSP15 and DSP40 of the adopted Local Plan Part 2: Development Sites and Policies Plan, and is unacceptable in that:*

- i. the provision of dwellings in this location would be contrary to adopted Local Plan policies which seek to prevent residential development in the countryside. Further, the development would not be sustainably located adjacent to or well integrated with the neighbouring settlement area;*
- ii. the introduction of dwellings in this location would fail to respond positively to and be respectful of the key characteristics of the area, particularly its predominantly undeveloped, backland location, which would be out of character with the prevailing pattern of development in the area;*
- iii. as a result of the poor layout design, the proposal would result in an excessive distance for refuse/recycling bins to be taken to and from the proposed properties, to the detriment of future residents;*
- iv. insufficient information has been provided to adequately demonstrate that no harm would be caused to features of ecological importance on and surrounding the site and protected species;*
- v. the proposal would have likely adverse effects on the integrity of European Protected Sites in combination with other developments due to the additional generation of nutrients entering the water environment and the lack of appropriate and appropriately secured mitigation;*
- vi. in the absence of a legal agreement to secure such, the proposal would fail to provide satisfactory mitigation of the 'in combination' effects that the proposed increase in residential*

*units on the site would cause through increased recreational disturbance on the Solent and Southampton Waters Special Protection Area and the Portsmouth Harbour Special Protection Area.'*

5.2 The five parts of the reason for refusal will be considered separately below.

**(i) Location of Site Contrary to Local Plan Policies**

5.3 This reason for refusal mirrors that of the earlier refused planning application P/18/1252/FP. In respect of part (a) of the reason for refusal, the proposed dwellings would result in additional dwellings in the designated countryside, and whilst the Local Planning Authority does not currently have a 5-year supply of housing, the provision of four dwelling in this rural location would not outweigh the harm on the character of the local area by the provision of this small backland estate. The current position on the Council's Housing Land Supply position was outlined in the Position Statement considered at the February 2021 Planning Committee. The Position Statement is attached at Appendix H. The Council acknowledges that the Appellant is seeking permission for these dwellings as self-build accommodation in order to address the current demand for this type of housing in the Borough. The Council acknowledges the need for self-build housing, as we acknowledge the current shortfall in the 5-year housing land supply.

5.4 The starting point for the consideration of this is Policy DSP40 (Housing Allocation) which applies where the Council cannot demonstrate an up-to-date five year supply of housing sites. The site is located outside and away from the defined urban settlement boundary and therefore lies within the countryside. The Whiteley Urban Settlement is located almost 300m to the east of the site, on the eastern side of Botley Road, to the rear of the houses that form part of the pattern of ribbon development that comprises Burridge. The urban settlement boundary currently comprises the western edge of the higher density residential environment of Whiteley.

5.5 Policy DSP40 of the Local Plan highlights that where the Council does not have a five year supply of land for housing, additional housing sites outside the urban area boundary may be permitted where they meet the five criteria listed below:

- (i) The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;*
- (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 to minimise any adverse impact on the countryside and, if relevant, the strategic gaps,*
- iv) *It can be demonstrated that the proposal is deliverable in the short term; and*
- v) *The proposal would not have any unacceptable environmental, amenity or traffic implications.'*

5.6 All of the above criteria must be complied with to ensure the development adheres to the provisions of Policy DSP40.

5.7 With regard to criterion ii) the site does not lie adjacent to, nor is it well related to an existing urban settlement boundary and as such fails to accord with this criteria of Policy DSP40. Burr ridge as a village has very limited services and facilities, therefore requiring most residents to access local services, such as doctors, shops, cafes, schools and employment by private vehicles. The services and facilities of Whiteley are located approximately 4km away, thereby further than the recommended 2km walking distance, and Burr ridge does not benefit from any regular bus services. The buses along Botley Road comprise school services, operating once in the morning and once in the evening during term time, and a local taxishare service provided by Hampshire Community Transport, which is an on demand, by appointment service. There are no regular frequent bus services, which would therefore require almost all journeys to be undertaken by the private car. The site is therefore in a poorly serviced location, with the even the nearest railway station located over 2km walk away to the southeast of the site. The appeal proposal is therefore contrary to Policy DSP40 (ii).

5.8 The matter of the suitability of the location for development was considered by the Appeal Inspector in 2020, where it was concluded that they considered that there were material considerations that would outweigh the conflict with criteria (ii) of Policy DSP40. However, this in part related to the consideration that Burr ridge was well served by public transport, with the Inspector wrongly highlighting the 'frequent number of buses', which as highlighted above is not correct. Further, despite the site bounded to the east and west by the extensive rear gardens of 19 Burr ridge Road and 35 Burr ridge Road, these area are largely undeveloped and blur into the open undeveloped countryside beyond. Furthermore, to the immediate south of the site is a woodland, which forms part of the wider woodland beyond and to the south of Green Lane.

5.9 Whilst it is acknowledged that the frontage of the site has a more semi-urban character, as you move southwards, the rural character becomes more prominent, and the extensive development of this would erode this, to the

detriment of the site and the wider area, and creating additional pressure on many other extensive gardens along Burr ridge Road. The Landscape Character Assessment highlights the area as being within LCA.13 Burr ridge – Swanwick – Whiteley, in an area characterised by a 'distinctive pattern of small-scale fields...contained by a strong framework of mature hedgerows, trees and blocks of woodland, providing a strong sense of enclosure and seclusion'.

- 5.10 The Assessment continues to describe the area as retaining a more intact and essentially rural character, whilst acknowledging that there may be potential to accommodate some small-scale development in areas of lower sensitivity where landscape character and quality is partly degraded. The landscape character of the site, bounded by largely undeveloped gardens and woodland is not considered to have been degraded, such as by significant elements of residential paraphernalia and domestic fencing, thereby retaining its edge of settlement, semi-rural character.
- 5.11 The development on this site would erode and as such degrade this character and would fail therefore to integrate with the neighbouring ribbon frontage settlement, which coupled with the lack of services and facilities and the relative distance to any formal regular public transport would represent an unsustainable location for new residential development. The Council therefore maintains that the proposal would be contrary to criteria (ii) of Policy DSP40.
- 5.12 Having regard for policies CS2 and CS14 of the Adopted Core Strategy, and DSP6 of the Adopted Local Plan Part 2, the proposal involves residential development outside of the defined urban area which does not have an overriding need for a countryside location. The application is therefore contrary to policies CS2 and CS14 of the Adopted Core Strategy.
- 5.13 Turning to policy DSP6, criteria i) and ii) do not relate to this application. With respect to criterion iii), the proposal does not comprise infilling within a continuous built-up frontage. The appeal represents the siting of new dwellings at the rear of an existing residential site which is contrary to policy DSP6.
- 5.14 The Council therefore consider that the principle of residential development at the site is therefore contrary to policies CS2 and CS14 of the Adopted Core Strategy and policy DSP6 of the Local Plan Part 2 and would represent unjustified residential dwellings in the designated countryside.

**(ii) Impact on the Character of the Area**

- 5.15 The matter of the character of the area has partially been considered in the preceding paragraphs. Burr ridge Road is characterised as a ribbon of

residential dwelling with a predominantly road frontage character, with many of the properties comprising long rear gardens with the open countryside beyond. At the location of the appeal site, the proposed dwelling would be situated behind this ribbon of road frontage properties, accessed via a narrow single gravelled track that currently serves 21 Burr ridge Road, and its annex (21a Burr ridge Road). Beyond the road frontage development along Burr ridge Road, the surrounding area is characterised as open, undeveloped countryside, forming part of the eastern countryside setting of the River Hamble, located approximately 750m to the northwest of the site. The provision of four large detached chalet bungalows, despite being set back from the road, would further erode this character and lead to increased pressure to further extend the realm of built form within this mixed, low density, road frontage ribbon residential character within this countryside location.

- 5.16 Policy CS17 of the Adopted Core Strategy requires proposals to *‘respond positively to and be respectful of the key characteristics of the area, including heritage assets, landscape, scale, form, spaciousness and use of external materials.’* It is the Council’s opinion that despite the provision of the existing single storey backland property at 21 Burr ridge Road, the prevailing character of this part of Burr ridge Road is of open, undeveloped countryside, with only detached road frontage dwellings with gardens extending into the open countryside being the defining characteristic. 21 Burr ridge Road predates many of the other properties that front Burr ridge Road, and despite its backland location, the use of backland development elsewhere along Burr ridge Road has not been replicated.
- 5.17 As such, the key overarching characteristic of Burr ridge Road is of road frontage development, and the appeal proposal fails to accord with this character. The scale of the proposed dwellings, whilst reduced from the earlier refused scheme and whilst set back into the site, the associated activity created by such structures and their presence is considered to be harmful to the key characteristics of this part of Burr ridge Road which is a semi-rural lane.
- 5.18 The impact on the character of the area was also considered by the Appeal Inspector in their Decision in 2020. Paragraph 6 of the Appeal Decision states:
- “Whilst the site would be screened from the main road the introduction of this pattern of development, which would fail to create a positive layout or respect the more varied ribbon style development that dominates the wider area, would be significantly harmful to the character of the area. The fact that the character is semi-urban does not justify the introduction of a cramped and ill-considered layout”.*

- 5.19 The Inspector continued to confirm in paragraph 8 that the development proposal would result in “*significant harm to the character and appearance of the area*”, conflicting with policies CS17 and criteria (iii) of DSP40.
- 5.20 The Council acknowledges that the current appeal proposal is an improvement, in terms of the overall scale of the scheme, design of the dwellings, and their relationship to each other when compared to the earlier proposal. However, as highlighted by the Appeal Inspector, the area is dominated by a varied ribbon style development, and the Council considers that a development such as the appeal proposed, despite its improvements, represents an estate format with short rear gardens, occupying a backland location would be out of keeping and incongruous to the prevailing ribbon frontage character along Burr ridge Road, which as the Appeal Inspector highlights dominates the wider area.
- 5.21 It is also important to highlight that the appeal decision on land to the rear of 17 Burr ridge Road (Appeal Reference: APP/W1720/W/18/3197659), adjacent to the site in respect of a proposed new dwelling on land to the rear of 17 Burr ridge Road was dismissed in November 2018 due to the unacceptable harm to the character and appearance of the area. This appeal decision was also considered at a time where the Council could not demonstrate a 5 year housing land supply position.
- 5.22 Further, the appeal decision for the backland development at 77 Burr ridge Road (Appeal Reference: APP/A1720/W/18/3209865), which the Appeal Inspector highlighted as being bounded by residential development, with outbuilding and other dwellings to the periphery considered that the tandem, backland development of the site would be incongruous and fail to respect the ribbon frontage development of Burr ridge Road, which in part resulted in the appeal being dismissed.
- 5.23 The Council therefore consider that the provision of a backland residential development of four houses in this location would, like the earlier development proposal cause unacceptable harm to the character and appearance of the area, and would therefore be contrary to the advice of policy CS17 of the adopted Core Strategy, and would represent an incongruous, urbanising feature, failing to respect the key characteristics of the area, contrary to criteria (iii) of DSP40.

**(iii) Living Conditions for future occupiers**

- 5.24 The appeal proposal, unlike the earlier scheme includes provision for a bin collection point for the properties, including for 21/21a Burr ridge Road at the site entrance to Burr ridge Road. From the front of 21a Burr ridge Road to the proposed location of the four dwellings is a considerable level change, with a steep slope

down to the proposed development site. There is then a further, gentler slope down from 21a Burrige Road to the road frontage.

- 5.25 Proposed Plot 3, to the southwest corner of the site would be required to drag a wheelie bin in excess of 130 metres from the front of their property to the kerbside at Burrige Road once a week for their refuse and recycling to be collected. The same but marginally shorter distances apply to the other plots. This distance is considerable even if the site were flat, however, the occupiers would be expected to take their full bins up a steep incline before then descending a further slope down to Burrige Road.
- 5.26 Given the distance and the topography of the site, and the lack of on-site refuse collection, the proposed refuse and recycling provision for the development would result in a poor quality of development and a detriment to future occupiers, who would be likely to leave bins at the collection point. The proposal therefore would result in an unacceptable adverse impact on the living conditions for future occupiers, and potential increased disruption to neighbouring occupiers, contrary to policy DSP3 and criteria (v) of DSP40.

**(iv) Impact on Ecology/Protected Species:**

- 5.27 The appeal site is located within an area of maintained grassland (lawn) as part of the extensive garden area serving 21 Burrige Road. The site is bounded to the south by woodland and to the west a line of trees and hedging which separates the site from the extensive rear garden of 31 Burrige Road. At the time of the application, the Council's Ecologist raised no in principle concerns with the application, although highlighted that insufficient information had been provided to demonstrate the level of impact on existing habitats to the periphery of the site.
- 5.28 The appellant submitted a Preliminary Ecological Appraisal and Dormouse Survey dated October 2018, and an Ecology Addendum dated August 2019. The reports were considered by the Council's Ecologist at the time of the application but given the date of the original report (2018) requested an updated survey be undertaken to ensure no significant changes to the site. The appellant submitted the appeal prior to the receipt of this updated information. However, the Appellant has since provided an updated Preliminary Ecological Appraisal (December 2020) which has been considered by the Council's Ecologist.
- 5.29 The Council's Ecologist has reviewed the updated Preliminary Ecological Appraisal and has raised no objection to the appeal proposal, subject to conditions (attached at the suggested conditions in Appendix A). Subsequently

the Council wishes to withdraw their objection to the scheme regarding reason for refusal (iv) – impact on protected species.

**(v) Impact on Protected Sites - nitrates**

- 5.30 The Solent is internationally important for its wildlife. Each winter it hosts over 90,000 waders and wildfowl including 10 percent of the global population of Brent Geese. These birds come from as far as Siberia to feed and roost before returning to their summer habitats to breed. There are also plants, habitats and other animals within The Solent which are of both national and international importance.
- 5.31 In light of their importance, areas within The Solent have been specifically designated under UK law. Amongst the most significant designations are Special Protection Areas (SPA) and Special Areas of Conservation (SAC). The following list of designated sites are located in proximity of Fareham Borough, and are known collectively as the Protected Sites around The Solent (Protected Sites):
- Solent and Southampton Water SPA and Ramsar site;
  - Portsmouth Harbour SPA and Ramsar site;
  - Chichester and Langstone Harbours SPA and Ramsar site;
  - Solent and Dorset Coast SPA;
  - Solent Maritime SAC; and,
  - Solent and Isle of Wight Lagoons SAC.
- 5.32 Natural England has highlighted that there is existing evidence of high levels of nitrogen and phosphorus in parts of The Solent with evidence of eutrophication. Natural England has further highlighted that increased levels of nitrates entering The Solent, as a result of increased amounts of wastewater from new dwellings, and increased air pollution from increased traffic generation will have a likely significant effect upon the Protected Sites. A further impact of increased recreational disturbance is considered below in part (vi) of the Statement of Case.
- 5.33 The Council has addressed, in the short term, the air quality impact up to 2023 through the provision of the Air Quality Habitats Regulation Assessment (prepared by Ricardo in 2019). The report is available to view on the Council's website: [www.fareham.gov.uk/planning/nitratepositionstatement.aspx](http://www.fareham.gov.uk/planning/nitratepositionstatement.aspx). However, the impact on water quality requires mitigation. Achieving nutrient neutrality is one way to address the existing uncertainty surrounding the impact of new development on the designated Protected Sites. Natural England has provided a methodology for calculating nutrient budgets and options for mitigation should this be necessary. The Natural England Methodology is

attached at Appendix I to this Statement of Case. The nutrient neutrality calculation includes key inputs and assumptions that are based on the best scientific evidence and research, however, for each input there is a degree of uncertainty. Natural England advises the decision maker to take a precautionary approach when addressing uncertainty and calculating nutrient budgets.

- 5.34 Regulation 63 of the Habitats and Species Regulations 2017 provides that planning permission can only be granted by a 'Competent Authority' if it can be shown that the proposed development will either not have a likely significant effect on the designated Protected Sites, or if it will have a likely significant effect, that effect can be mitigated so that it will not result in an adverse effect on the integrity of the designated Protected Sites. This is done following a process known as a Habitat Regulations Assessment and Appropriate Assessment. The competent authority is responsible for carrying out this process, although they must consult with Natural England and have regard to their representations. The competent authority in respect of this proposal is the Planning Inspectorate.
- 5.35 In order to aid developers to achieve nutrient neutrality the Council has entered into a s106 legal agreement with the Hampshire and Isle of Wight Wildlife Trust (HIWWT) and the Isle of Wight Council (dated 30 September 2020) to enable developers to enter into a contract to purchase 'nitrate credits' for a re-wilding project by the HIWWT on a farm, known as Little Duxmore Farm. The agreement would see a corresponding parcel of agricultural land at Little Duxmore Farm on the Isle of Wight being removed from intensive agricultural use, and therefore provide a corresponding reduction in nitrogen entering The Solent marine environment. As part of that agreement, conditional on the grant of planning permission, conditions requiring the securing of a water consumption limit of the Building Regulations Optional requirement of 110 litres per person per day would be required.
- 5.36 At the time of the consideration of the application by the Planning Committee in January, the appellant had provided no evidence that they were able to mitigate the likely significant effects of the development on the designated Protected Sites from increased nitrogen loading. However, since that time, the Council has been notified that the appellant has a contract with the HIWWT, and purchased the necessary credits to off-set their development proposal.
- 5.37 It is however the responsibility of the Planning Inspectorate as the competent authority to undertake the Appropriate Assessment, in consultation with Natural England to determine if the mitigation is sufficient to address the likely significant effect of the development on the designated Protected Sites around the Solent. If insufficient credits have been purchased, or Natural England raise an objection this approach, the Council would maintain that the development would result in

a likely significant effect, in terms of nitrogen impact and the appeal proposal would be contrary to policies CS4, DSP13 and criteria (v) of DSP40.

**(vi) Impact on Protected Sites – recreational disturbance**

- 5.38 As highlighted above, the coastline around The Solent provided feeding grounds for internationally protected populations of overwintering birds and is used extensively for recreation. Natural England has concluded that the likelihood of a significant effect in combination arising from new housing around The Solent cannot be ruled out. Applications for residential development within the Borough therefore need to propose measures to mitigate the direct impacts of their development in the Solent SPA. This can be done by the provision of a financial contribution, which contributes towards education and the provision of Solent Rangers to help protect and highlight awareness of the impact of recreational disturbance of the Solent's various Special Protection Areas. This approach forms part of the Solent Recreation Mitigation Strategy (December 2017) adopted by the Council. The Strategy is attached at Appendix G to this Statement of Case.
- 5.39 The Appellant has not provided the necessary contribution to address this, or provided a draft Section 106 Unilateral Undertaking highlighting their intention to make this contribution in the event that the appeal is allowed. It is noted in the Appellant's Statement of Case their willingness to pay this contribution, but in order to ensure this is undertaken and in order for the competent authority to confirm that the necessary mitigation is in place, it would need to be either paid upfront or secured via a legal agreement. Until such time, it remains the opinion of the Council that the proposal would result in increased recreational disturbance to the Special Protection Areas, and therefore fail to comply with policy DSP15 of the adopted Part 2 Local Plan.

## **6.0 Conclusion**

- 6.1 The Council acknowledge its current lack of a five-year supply of housing provision, and in such circumstances, Policy DSP40 becomes a material consideration in the determination of planning applications for residential developments in the countryside that do not fall under the remit of paragraph 79 of the revised NPPF.
- 6.2 The Council has carefully assessed the proposals against the five criteria in Policy DSP40: Housing Allocations and it is considered that the appeal proposal is contrary to several of Policy's criteria.
- 6.3 In addition and given the location of the appeal site outside of the defined urban settlement boundary and given that the proposal does not relate to agriculture, forestry, horticulture and required infrastructure, the principle of development of the site would be contrary to policies CS2, CS6 and CS14 of the Core Strategy and policy DSP6 of the Local Plan Part 2. The introduction of four dwellings on this site is further judged by the Council to harm the character of this countryside location, contrary to the prevailing character of road frontage ribbon development, contrary to policies CS14 and CS17.
- 6.4 The Council acknowledge that the proposals will make provision of an additional four residential self-build units to address the Council's shortfall.
- 6.5 However, given the limited contribution the proposal would make to addressing the Council's shortfall in housing together with the site's location poorly integrated with the existing urban area, and the harm which would arise to the character of the area; the Council consider that these factors significantly and demonstrably outweigh the benefits of granting planning permission.
- 6.6 Further, despite the overall improvements to the scheme from the earlier dismissed appeal, with fewer houses and housing designs of a more subservient appearance, the principle of the development in this location would be harmful to the to the prevailing character of the area, through the provision of a modern estate type development in a backland location, in a semi-rural setting dominated by road frontage, ribbon development, largely characterised with long rear gardens extending to the wider countryside beyond.
- 6.7 Finally, the Council acknowledges that the Appellant has agreed the nitrate mitigation to address the impact, which if considered acceptable by the Planning Inspectorate would address that part of the reason for refusal, subject to the

completion of an Appropriate Assessment and consultation with Natural England. However, the Appellant has thus far made no provision to address the recreational disturbance impact, and therefore a likely significant impact on the Special Protection Areas would remain.

- 6.8 Therefore, having regard to the above, the Council respectfully requests that the Inspector dismisses the appeal.

# Appendices

## **APPENDIX A: Suggested Conditions**

A.1 Below are some suggested conditions should the Inspector be minded to allow the appeal and grant Planning Permission. It is noted that the Appellant has purchased the nitrate mitigation credits from the HIWWT scheme, and therefore no condition regarding securing these would be necessary.

1. The development hereby permitted shall be begun before the expiration of three years following the date of this decision.

REASON: To allow a reasonable time period for work to start, to comply with Section 91 of the Town and Country Planning Act 1990, and to enable the Council to review the position if a fresh application is made after that time.

2. The development hereby permitted shall be retained only in accordance with the following approved plans:

- i) Location Plan and Site Plan (Drawing: 17.096.36.01 Rev L);
- ii) Plot 1 – Plans and Elevations (Drawing: 17.096.36.03);
- iii) Plot 2 – Plans and Elevations (Drawing: 17.096.36.04);
- iv) Plot 3 – Plans and Elevations (Drawing: 17.096.36.05);
- v) Plot 4 – Plans and Elevations (Drawing: 17.096.36.06);
- vi) Car barn – Floor Plan and Elevations (Drawing: 19.043.02\_17.096.36.07);
- vii) Street Scenes (Drawing: 19.043.02\_17.096.36.10 Rev A);
- viii) Proposed 3D View (Drawing: 17.096.36.20 Rev A); and,
- ix) Phasing Plan (Drawing: 17.096.36.30 Rev A).

REASON: To avoid any doubt over what is permitted

3. No development hereby permitted shall proceed beyond damp proof course level until details (including samples where requested by the Local Planning Authority) of all proposed external facing (and hardsurfacing) materials have been submitted to and approved by the Local Planning Authority in writing. The development shall be carried out in accordance with the approved details.

REASON: To secure the satisfactory appearance of the development.

4. No dwelling, hereby approved, shall be first occupied until the approved parking and turning areas (where appropriate) for that property have been constructed in accordance with the approved details and made available for use. These areas shall thereafter be kept available for the parking and turning of vehicles at all times unless otherwise agreed in writing by the Local Planning Authority following the submission of a planning application for that purpose.

REASON: In the interests of highway safety.

5. No development shall take place until details of the type of construction proposed for the roads and access(es) and the method of disposing of surface water have been submitted to and approved by the Local Planning Authority in writing.

REASON: To ensure that the roads are constructed to a satisfactory standard.

6. No development erected on the site subject to this planning permission shall be first occupied until there is a direct connection from it, less the final carriageway surfacing, to the existing highway. The final carriageway surfacing shall be commenced within three months and completed within six months from the date upon which erection is commenced of the penultimate building/dwelling for which permission is hereby granted. The roads shall be laid out and made up in accordance with the approved specification, programme and details.

REASON: To ensure that the roads and footways are constructed in a satisfactory manner.

7. No dwelling shall be occupied until the bin and cycle stores have been made available in accordance with the approved plans. These designated areas shall thereafter be kept available and retained at all times for the purpose of bin and cycle storage.

REASON: In the interests of visual amenity and in order to facilitate modes of transport alternative to the private car.

8. No development shall commence on site until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority (LPA). The Construction Management Plan shall address the following matters:

- a) How provision is to be made on site for the parking and turning of operatives'/contractors'/sub-contractors' vehicles and/or construction vehicles;

- b) the measures the developer will be implementing to ensure that operatives'/contractors'/sub-contractors' vehicles and/or construction vehicles are parked within the planning application site;

- c) the measures for cleaning the wheels and underside of all vehicles leaving the site;

- d) a scheme for the suppression of any dust arising during construction or clearance works;

e) the measures for cleaning Burridge Road to ensure that they are kept clear of any mud or other debris falling from construction vehicles, and

f) the areas to be used for the storage of building materials, plant, excavated materials and huts associated with the implementation of the approved development.

The development shall be carried out in accordance with the approved CMP and areas identified in the approved CMP for specified purposes shall thereafter be kept available for those uses at all times during the construction period, unless otherwise agreed in writing with the LPA. No construction vehicles shall leave the site unless the measures for cleaning the wheels and underside of construction vehicles are in place and operational, and the wheels and undersides of vehicles have been cleaned.

REASON: In the interests of highway safety and to ensure that the occupiers of nearby residential properties are not subjected to unacceptable noise and disturbance during the construction period. The details secured by this condition are considered essential to be agreed prior to the commencement of development on the site so that appropriate measures are in place to avoid the potential impacts described above.

9. The development hereby permitted shall be carried out in accordance with the measures detailed in Sections 5.3, 5.4 and 5.6 of the submitted Updated Preliminary Ecological Appraisal (report by Ecosupport dated December 2020).

REASON: To provide ecological protection of protected species.

10. Prior to commencement of the development hereby permitted, a detailed scheme of biodiversity enhancement to be incorporated into the development shall be submitted to and approved in writing to the Local Planning Authority. Development shall subsequently proceed in accordance with any such approved details.

Reason: To mitigate the impact of the development on biodiversity of the site. The details secured by this condition are considered essential to be agreed prior to the commencement of development on the site so that appropriate measures are in place to avoid damage to the existing biodiversity on the site.

11. No work on site relating to the construction of any of the development hereby permitted (Including works of demolition or preparation prior to operations) shall take place before the hours of 0800 or after 1800 Monday to Friday, before the hours of 0800 or after 1300 Saturdays or at all on Sundays or

recognised bank and public holidays, unless otherwise first agreed in writing with the Local Planning Authority.

REASON: To protect the occupiers of nearby residential properties against noise and disturbance during the construction period.

12. None of the residential units hereby permitted shall be occupied until details of water efficiency measures to be installed in each dwelling have been submitted to and approved in writing by the Local Planning Authority. These water efficiency measures should be designed to ensure potable water consumption does not exceed an average of 110 litres per person per day. The development shall be carried out in accordance with the approved details.

REASON: In the interests of preserving water quality and resources

- Appendix B: January 2021 Committee Report (and Update Sheet)**  
(Attached separately)
- Appendix C: Appeal Decision APP/L1720/W/19/3235706**  
**21 Burr ridge Road, Burr ridge (Appeal Site)**  
(Attached separately)
- Appendix D: Appeal Decision APP/A1720/W/18/3197659**  
**17 Burr ridge Road, Burr ridge**  
(Attached separately)
- Appendix E: Appeal Decision APP/L1720/W/19/3226088**  
**35 Burr ridge Road, Burr ridge**  
(Attached separately)
- Appendix F: Appeal Decision APP/L1720/W/18/3209865**  
**77 Burr ridge Road, Burr ridge**  
(Attached separately)
- Appendix G: Solent Recreation Mitigation Strategy**  
**December 2017**  
(Attached Separately)
- Appendix H: Housing Land Supply Position Paper**  
**February 2021**  
(Attached Separately)
- Appendix I: Advice on Achieving Nutrient Neutrality for New**  
**Development in the Solent Region**  
**Natural England (June 2020)**  
(Attached Separately)

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:	Mr
First Name:	Steve
Last Name:	Carrington
Job Title: (where relevant)	
Organisation: (where relevant)	Foreman Homes Ltd
	c/o Agent
Address:	
Postcode:	
Telephone Number:	
Email Address:	

A3 Please provide the Agent's details:

Title:	Mr
First Name:	Steven
Last Name:	Brown
Job Title: (where relevant)	
Organisation: (where relevant)	Woolf Bond Planning
Address:	
Postcode:	
Telephone Number:	
Email Address:	

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1 and HP4**

**and**

**Omission of 21 Burr ridge Road, Burr ridge  
as an Allocation in Policy H1 (SHELAA Site  
Ref 3210).**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
8. Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015)
9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in 21 Burr ridge Road, Burr ridge. The Site has been assessed in the SHELAA as Site Ref: 3210 but has been discounted.
- 1.2. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore advocate changes to the Local Plan to address this, including the allocation of 21 Burr ridge Road, Burr ridge.
- 1.3. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
- 1.4. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## 2. REPRESENTATIONS AND SUPPORTING INFORMATION

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)
- Council's SoC for 21 Burr ridge Road Appeal (**Appendix 11**)

2.2. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection
Omission site 21 Burr ridge Road, Burr ridge (SHELAA Ref 3210) – failure to include as an allocation in Policy H1	Objection

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
- 3.4. To address this requirement for additional homes, we contend that further land should be allocated including the land controlled by our clients at 21 Burr ridge Road, Burr ridge (SHELAA site ref 3210). This site can accommodate approximately 6-5 dwellings (including a policy-compliant level of affordable housing) in a sustainable location.

- 3.5. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities and the allocation of 21 Burr ridge Road, Burr ridge can also supply homes to contribute towards to resolving this issue.
  
- 3.6. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
  
- 3.7. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, FBC has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement asset out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.

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<sup>7</sup> (541 x 18) + 1,000

5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

- 5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.
- 5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

## Conclusions

- 5.33. The housing requirement and delivery as set out in Policy H1 cannot be said to be sound as it fails to provide for at least 15 years post adoption together with a failure to plan for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### Changes sought to the Development Requirements in Policy H1.

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and like Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;

- c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
- d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.

5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.

1. That policy H1 is amended to:
  - A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need (including 21 Burr ridge Road, Burr ridge) and
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
2. That consequential amendments are made to the document to reflect these revisions.

## 6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY

### General

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

- 6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.
- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Portchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.

- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
  - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
  - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
  - d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
  - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
  - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

- 6.10. The Inspector’s conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.
- 6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client’s omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 10**):
- 6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.
- 6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 10** is that the shortfall is much greater than purported to be the case by the Council.
- 6.14. The below Table provides a comparison between the housing land supply position set out in the Council’s Published Report to Committee in February 2021, the Council’s updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 10**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

- 6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.
- 6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

## **Suggested Changes to Policy HP4**

- 6.17. Policy HP4 cannot be said to be sound in respect of the following:
- a) Not positively prepared as the policy (alongside others in the document) will fails to provide an effective solution towards maintaining a five years supply of housing,
  - b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.
- 6.18. To address these matters of soundness, the following amendments is proposed:
- 1. That clause c is omitted from policy HP4.

## **7. OMISSION SITE: FAILURE TO IDENTIFY 21 BURRIDGE ROAD, BURRIDGE AS A HOUSING ALLOCATION**

### **General**

- 7.1. Through the other representations submitted to the policies of the Plan, there is a need to allocate additional land for housing development. Having regard to the representations and the earlier promotion of the omission site for residential development, the evidence justifies the allocation of the site for 5 dwellings.
- 7.2. The Site is well related to the urban area. It is not in a strategic gap and nor is it identified as a valued landscape. Moreover, the Site affords a sustainable location in helping to meet identified housing needs.
- 7.3. The Site is currently subject to an appeal made against the non-determination by Fareham Borough Council for a planning application for residential development of four self-build dwellings, amenity areas and a means of access from Burr ridge Road (LPA Ref: P/20/1007/FP).
- 7.4. Although the appeal relates to a non-determination the application was taken to Committee and subsequently refused. The Council's Statement of Case (SoC), which includes the reasons for refusal, is set out in Appendix 11. As set out in the SoC there are six reasons for refusal as follow.
- 7.5. Reason i) relates to the location of the site and the perception that it is not well integrated with the neighbouring settlement area. A previous appeal, and other appeals along this stretch of road, found the location to be sustainable and appropriate for development. Although the site does not adjoin the settlement boundary, it is adjacent to an existing residential development which it integrates into. There are similar sites around the Borough that have been permitted despite their distance from a settlement boundary therefore it should not be ruled out on this basis.
- 7.6. Reason ii) relates to the layout of the proposed development in that it would lead to backland development which is not prominent along Burr ridge Road. The

development will however, be screened from public view and would not be noticeable. The negatives of introducing this type of development does not outweigh its benefits, especially as there are two existing dwellings adjoining this site (21 and 21a) which are considered to be backland development.

- 7.7. Reason iii) states that the layout is of poor design in relation to bin
- 7.8. Reason iv) relates to lack of information regards to ecology and is not a direct allegation of harm. Further information was provided as part of the appeal documentation to address the concerns raised.
- 7.9. As set out in the Council's SoC matters v) and vi) can be addressed by the means of a legal agreement prepared under Section 106 of the Town & Country Planning Act 1990.
- 7.10. Development of the site for self and custom build dwellings will be in accordance with paragraph 62 of the NPPF 2021 which states that "housing need for different groups (including those wishing to commission or build their own homes) should be assessed and reflected in planning policies". There is an identified need for this type of dwelling in the borough as set out in emerging policy HP9 of the Local Plan, the Background Paper: Self and Custom Build Need (prepared to inform the Local Plan 2036) and the Council's Action Plan (September 2018). The Action Plan sets out the Council's aims to "positively influence of help secure development opportunities where we can support individuals or organisations in our local communities to deliver high quality self build or custom building to meet demand in the Borough". Therefore, in accordance with this stance, schemes for self and custom build dwellings should be supported and promoted.
- 7.11. On the basis of the evidence prepared in support of the development of the site for housing, the site has no physical constraints, and is well-related to the existing residential development. It is in close proximity to local services and facilities such that it affords a sustainable location in helping to meet identified housing needs whilst providing for sustainable patterns of growth.

- 7.12. We therefore consider that part of the solution to addressing the identified housing shortfall is to allocate the subject site, 21 Burr ridge Road, for residential development alongside consequential changes to the Policy Map.

### **Change sought to the Local Plan**

- 7.13. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **21 Burr ridge Road (SHELAA Ref: 3210) should be identified as a housing allocation for circa 5 dwellings, with consequential amendments to settlement boundaries and the other designations, as detailed in other representations.**

## **8. OVERALL CONCLUSIONS**

- 8.1. Our representations have identified a number of concerns with the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
- 8.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.
- 8.3. These matters can be addressed through Main Modifications.

## **9. FINAL REMARKS**

- 9.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 9.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations, including the allocation of our client's site 21 Burr ridge Road, Burr ridge for approximately 5 dwellings.
- 9.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.





The Planning Inspectorate

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# **Report to Tonbridge and Malling Borough Council**

**by Louise Crosby and Luke Fleming**

**Inspectors appointed by the Secretary of State**

**Date: 07 June 2021**

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Planning and Compulsory Purchase Act 2004  
(as amended)  
Section 20

## **Report on the Examination of the Tonbridge and Malling Borough Council Local Plan**

The Plan was submitted for examination on 23rd January 2019

The examination hearings were held between 6th and 8th October 2020

File Ref: PINS/H2265/429/8

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## **Abbreviations used in this report**

DtC	Duty to Co-operate
HMA	Housing Market Area
LPA	Local Planning Authority
MoUs	Memorandums of Understanding
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
SDC	Sevenoaks District Council
the Act	Planning and Compulsory Purchase Act 2004 (as amended)
the Plan	Tonbridge and Malling Borough Local Plan

## **Non-Technical Summary**

This report concludes that the Tonbridge and Malling Borough Local Plan (the Plan) is not legally compliant in respect of the Duty to Cooperate (DtC) and, as such, we recommend that the Plan is not adopted.

## Introduction

1. This report contains our assessment of the Tonbridge and Malling Borough Local Plan in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended) (the Act). It considers whether the Plan's preparation has complied with the duty to co-operate (DtC).
2. The revised National Planning Policy Framework (NPPF) was published in July 2018 and further revised in February 2019. It includes a transitional arrangement in paragraph 214 which indicates that, for the purpose of examining this Plan, the policies in the 2012 NPPF will apply. Similarly, where the Planning Practice Guidance (PPG) has been updated to reflect the revised NPPF, the previous versions of the PPG apply for the purposes of this examination under the transitional arrangement. Therefore, unless stated otherwise, references in this report are to the 2012 NPPF and the versions of the PPG which were extant prior to the publication of the 2018 NPPF.
3. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound Plan. The Tonbridge and Malling Borough Local Plan, submitted on 23 January 2019, is the basis for our examination. It is the same document as was published for consultation between 1 October 2018 and 19 November 2018.
4. This report considers whether the Plan's preparation has complied with the DtC. Given our conclusion in relation to the DtC, we do not go on to consider whether the Plan is sound and whether it is compliant with other legal requirements. If a local planning authority cannot demonstrate that it has complied with the DtC at the independent examination of their local plan, then Section 20(7A) of the Act requires that the examiner must recommend non-adoption of the Plan. This is the situation in this case, and it is not, therefore, relevant for us to consider the other matters in this Report. Accordingly, we have not recommended any main modifications.
5. Hearing sessions were held between 6 and 8 October 2020 and they focussed on legal compliance matters including the DtC and Sustainability Appraisal.
6. Further hearing sessions were planned as part of the examination from 3-5 November and on 10 November 2020 to consider other soundness issues. However, following our consideration of the evidence presented by Tonbridge and Malling Borough Council (the Council) and other participants in response to our Matters, Issues and Questions<sup>1</sup> at the hearing session in relation to DtC, and taking into account written representations and discussion at that hearing session we notified the Council in a letter<sup>2</sup> dated 22 October 2020, that we had

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<sup>1</sup> ED56

<sup>2</sup> ED67

significant concerns in respect of legal compliance. The letter also explained that we had asked the Programme Officer to cancel the hearings planned for November 2020 and that we would be writing to the Council as soon as possible setting out our specific thoughts in more detail. The letter also advised that we would not reach a final conclusion on the way forward for the examination until we had had a chance to consider the Council's response to that letter.

7. Our letter<sup>3</sup> to the Council, dated 15 December 2020, set out our concerns with regards to the DtC in some detail. The Council submitted a response dated 29 January 2021<sup>4</sup>, along with a number of appendices. Having fully considered the Council's response and appendices, our final letter<sup>5</sup>, to the Council, dated 2 March 2021, set out our conclusions on this matter and stated that, there were two options before the Council; either to withdraw the Plan from examination or we would write a final report recommending its non-adoption because of a failure to meet the DtC. We gave the Council 21 days to consider which option they wished to pursue. On 11 March 2021 the Council confirmed that it would not be withdrawing the Plan and invited us to prepare a final report at our earliest convenience<sup>6</sup>.

## **Assessment of Duty to Co-operate**

### **Background**

8. Section 20(5)(c) of the Act requires that we determine whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
9. Section 33A of the Act imposes a duty on a local planning authority to co-operate with other local planning authorities, the County Council and prescribed bodies or other persons by engaging constructively, actively and on an ongoing basis in relation to the preparation of a development plan document so far as relating to a strategic matter to maximise the effectiveness of the activity of plan preparation. It makes clear that sustainable development or use of land that would have a significant impact on at least two planning areas is such a strategic matter. Account can only be taken of the engagement undertaken by authorities up to the point of submission of the Plan, as the assessment of compliance with the DtC only relates to the preparation of the Plan.
10. Government policy in the 2012 NPPF paragraphs 178 to 181 sets out the importance placed on planning strategically across boundaries. Paragraph 181

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<sup>3</sup> ED68

<sup>4</sup> ED69

<sup>5</sup> ED81

<sup>6</sup> ED82

states that "local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination" and that "cooperation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development".

11. It is not disputed by the Council that housing is a strategic matter for the purposes of S33A of the Act, which required cooperation as set out above. Whether the DtC has been complied with is a matter of judgement for the examining Inspectors following consideration of the evidence presented by the Council and other participants, both in writing and at the hearing sessions.
12. Sevenoaks District Council (SDC) considers that it is unable to meet all of its own housing needs. It is a neighbouring local authority and forms a large part of the West Kent Housing Market Area (HMA) which also includes a significant part of Tonbridge and Malling Borough, as well as parts of Tunbridge Wells Borough. Our report will focus on the engagement of the Council with SDC, in relation to housing across the HMA. The NPPF (para 47) states that local planning authorities (LPAs) should use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for housing in the HMA, as far as is consistent with the policies set out in this Framework.

**Did the Council know that Sevenoaks District Council considered that it would be unable to meet its own housing needs in full, prior to the submission of their plan for examination in January 2019?**

13. The Council explained at the hearings that it was not clear until SDC's Regulation 19 (of the Town and Country Planning (Local Plan) (England) Regulations 2012 (the Regulations)) Plan was published in December 2018 what the scale of unmet need was and even then it was not certain as the Plan had not been examined by an Inspector and the housing need and requirement found sound. As set out above, the Tonbridge and Malling Regulation 19 Plan was submitted for examination on 23 January 2019 which was before the transitional deadline of 24 January 2019, set out in paragraph 214 of Annex 1 to the July 2018 and February 2019 versions of the NPPF.
14. At the hearings the Council's view was that until SDC's Plan had been consulted on there was uncertainty about whether there was any unmet need and the basis for that. Furthermore, there had not been a process of examination to demonstrate that there were unmet needs and even if there were unmet needs there was a chance that they could be quite small. However, SDC's Regulation 18 Plan which it consulted on, between July and September 2018, identified a need for 13,960 dwellings and identified sites to

meet between 6,582 and 13,382 dwellings<sup>7</sup>. So, at this stage it was clear there was a likely shortfall of at least around 600 dwellings, and this was the best case scenario. At worst it was closer to approximately 7000. While the level of unmet need and the justification for it could be a matter for debate, there is enough here to demonstrate that this was a strategic matter on which cooperation was required. In the submitted SDC Regulation 19 Plan the unmet need was in the order of 3,392 dwellings<sup>8</sup>. The calculation of housing need is not an academic exercise, it is a question of identifying an actual local need.

15. However, much earlier than this, in October 2017 when SDC were at their 'issues and options' stage of plan preparation, the Council wrote to SDC (ED78B), saying, "At this stage and based on the evidence available it is highly unlikely that there would be supportable reasons or indeed the capacity for meeting any unmet need from Sevenoaks in Tonbridge and Malling".
16. This was at a stage in the process when officers in a report to Tonbridge and Malling Council's Planning and Transportation Advisory Board (ED78A), in December 2017, advised that SDC, unlike Tonbridge and Malling Council, was not planning to release Green Belt land to meet its housing need. It also says that, even with some Green Belt releases, "the conclusion is that Sevenoaks will be a significant way adrift from meeting its identified housing needs". So, in our view, it is clear that the Council knew in 2017 that SDC would be likely to reach the judgement that it would be unable to meet its own housing needs in full, even with Green Belt release.
17. The Council's views on market capacity are informed by a Housing Delivery Study (CD HO3) which was published in September 2017. The purpose of the Study was to consider the market capacity and potential pace of housing delivery within the Borough to inform the development of the emerging Local Plan. However, paragraph 1.7 says that "emerging evidence suggests that a number of neighbouring authorities may not be able to meet in full their objectively assessed housing need. Some authorities may therefore ask TMBC whether it is able to help to address an unmet housing need arising". Paragraph 4.8 advises that "...in addition to Tonbridge and Malling's own housing needs, the Council has a Duty to Cooperate with neighbouring authorities and is likely to need through the plan-making process to consider the potential to contributing to meeting unmet housing needs from beyond the borough boundary. A core role of this study is to consider what additional housing delivery the market could potentially accommodate".

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<sup>7</sup> Page 2 of letter dated 28 October 2019, from the Inspector examining the SDC Plan

<sup>8</sup> Paragraph 14 of the Report on the Examination of SDC Plan, dated 2 March 2020

18. It is clear then that one of the motivations for the September 2017 Study was to consider the issue of unmet needs arising in a number of neighbouring authorities. Irrespective of a number of technical concerns raised by representors with regard to whether this evidence demonstrates market capacity issues or not, in our view the Housing Delivery Study is further evidence that shows that the Council knew in 2017 that SDC had or was likely to have unmet need and that they may be asked for help with meeting the need.
19. Also, it is well documented that the Council, along with SDC and Tunbridge Wells were involved in a pilot scheme (West Kent Statement of Common Ground Pilot Project), which appears to have started in 2017. This pilot scheme with the Planning Advisory Service (PAS) was set up to look at the use of Statements of Common Ground in plan making. Paragraph 6.6 of the PAS facilitator's notes, dated April 2018, says "Each of the Council's has a clear figure for its housing need, but whilst Tonbridge and Malling BC is confident that it can meet its need, Sevenoaks DC and Tunbridge Wells BC have not yet completed the work needed to determine whether or not they can meet their housing need. Thus the Councils are not yet in a position to reach agreement on the matter of housing supply". However, paragraph 6.3 of the same notes says, "This may increase the housing land supply but it remains unlikely that Sevenoaks DC will be able to meet its housing need in full". This shows that it was known then that there was likely to be some unmet need in SDC, albeit there was no firm figure.
20. In summary, it appears from the evidence before us that the Council knew for a number of years, prior to the submission of their Plan for examination, that it was highly likely that SDC would reach the judgement that it would be unable to meet its housing need in full. While the scale of the unmet need was uncertain, the overall position was clear well in advance of the submission of the Plan for examination in January 2019. It should, therefore, have been obvious to the Council that this was a strategic matter to which the DtC applied.
21. This should have led to the Council engaging constructively, actively and on an ongoing basis with SDC on unmet housing needs, regardless of whether this was a precise figure or a range, or indeed whether the Council felt it may not be able to accommodate the unmet need in full or in part. The requirement of the Act is for authorities to actively engage to maximise the effectiveness of plan preparation.

**Did the Council engage constructively, actively and on an ongoing basis with SDC on unmet housing needs?**

22. In the Council's Duty to Cooperate Statement (CD SC1), section 8 deals with Cross-Boundary Issues. The table in paragraph 8.1 of this document sets out the strategic cross boundary issues, the key neighbouring authorities/organisations in relation to each issue and the summary of cooperation. Under the housing section of this table the key neighbouring authorities/organisations are listed as Maidstone Borough Council, Ashford Borough Council, Kent County Council and Highways England. It seems that the limited extent of this table is because it only covers authorities where cross boundary issues are specifically covered in the Plan. Nowhere in this document, which is dated January 2019, and therefore postdates the publication of the SDC Regulation 19 Plan on 18 December 2018, is there any mention of unmet housing need in SDC. If there had been any constructive, active and ongoing engagement with SDC ahead of submission on what was clearly a strategic matter, it would be reasonable to expect that this would at least be mentioned in the Council's DtC statement.
23. As set out above, it was apparent from as early as October 2017 there were clear signs that SDC was likely to conclude that it would not be able to meet its housing needs in full. It seems that regular meetings were held between the Council and SDC during the preparation of the Council's Plan, but there is no evidence that unmet housing need in SDC was discussed at these meetings and no meeting minutes have been provided to evidence that housing needs were discussed. The Council say that the discussion was predominantly about 'constraints' to meeting housing needs but no minutes of any of these meetings have been produced as evidence of what was actually discussed. Consequently, there is no evidence before us, that these meetings were used for constructive and active engagement in an attempt to resolve the strategic matter of unmet housing need and maximise the effectiveness of plan preparation.
24. The Council argue that SDC did not formally ask them for help and it was not up to the Council to "make the running", but this is a circular argument with a risk that both parties defer the issue to the other without any meaningful attempt to resolve it. We are obliged to consider whether the Council cooperated and the question of whether or not SDC made any running does not remove the obligation on the Council, particularly as the issue of unmet housing need in Sevenoaks appeared to be well known to both. Moreover, it is clear from the Council's letter sent to SDC in October 2017, where they say "At this stage and based on the evidence available it is highly unlikely that there would be supportable reasons or indeed the capacity for meeting any unmet need from Sevenoaks in Tonbridge and Malling", that such a request would have been likely to be pointless. The letter was therefore a

discouragement to constructive, active and ongoing engagement, because it can reasonably be read as closing the door to cooperation. Indeed, there does not appear to have been much engagement for the next 15 months or so, up to the submission of the Plan for examination. In fact, very little evidence of any meaningful engagement in relation to this particular strategic matter has been submitted for us to take into account.

25. The Council explained at the hearings that, if they had delayed the submission of the Plan to try to accommodate some of the unmet need from SDC, once the SDC Regulation 19 Plan was published in December 2018, they would have had to effectively start plan preparation again. This is because they would have missed the transitional deadline in NPPF paragraph 214 and their housing need would have increased by around 3000 dwellings, due to the introduction of the standard method in the 2018 and 2019 versions of the NPPF<sup>9</sup> and related PPG. Whilst this may have been so, it is not an adequate or legally compliant reason to not engage. Early engagement in 2017, when there was first evidence that SDC were unlikely to be able to meet their housing need, would not necessarily have caused delays to the overall process and to the Council meeting the transitional deadline<sup>10</sup>. Furthermore, the decision to push ahead to submit on or before the 24 January 2019 was entirely a choice made by the Council. Importantly, even if no agreement had been reached on the matter, if constructive, active and ongoing engagement had taken place from the earliest stages of preparation of the Plan, the Plan would have been found legally compliant in relation to the DtC.
26. The conclusion of the SDC Regulation 18 consultation, in September 2018, was some four months prior to the submission of the Plan for examination. At this point the unmet need was still a range and would only be confirmed on conclusion of the Sevenoaks examination. This is something the Council argue is necessary before active and constructive engagement can commence, but we strongly disagree. It should have been clear at this time (i.e. four months prior to submission of the Plan), if not earlier, that there was a strategic matter relating to unmet housing need which required addressing through constructive engagement, regardless of the lack of clarity at the time over the precise volume of unmet need.
27. Whilst it was not clear in 2017, or even later in the process, at the Regulation 18 consultation stage, what the exact level of unmet need was or would be, the fact that SDC considered there was likely to be some unmet need should have led to constructive, active and ongoing engagement between the Council and SDC at that point and subsequently.

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<sup>9</sup> NPPF 2019 Paragraph 60

<sup>10</sup> NPPF 2019 Annex 1, paragraph 214

28. The Council advise that, like SDC, they have large amounts of Green Belt land, which is a constraint to meeting housing needs other than their own. Both authorities have significant areas of Green Belt as well as land in Areas of Outstanding Natural Beauty (AONB). The Council carried out a Green Belt review of land in their own administrative boundary, leading to the release of some Green Belt land in the Plan as well as a proposal to put some land into the Green Belt.
29. However, there is no evidence that at any time the Council cooperated or even considered cooperating with SDC on a joint review of the Green Belt across both of their boundaries to understand the comparative quality across the two authority areas and any potential to amend Green Belt boundaries to fully or more fully meet needs. Nor was there any joint work to assess and reach an agreement on the housing capacity on non Green Belt areas across both authorities or on how that capacity might reasonably be maximised. The Council say the reason for this is that the two LPAs were at different stages of plan making, however the plans were submitted for examination within months of each other. In addition, the fact that the Council disagreed with SDC on the approach they were taking to Green Belt release did not mean the DtC did not apply and could be ignored.
30. In terms of the Council's position about relative timescales, the Council's Regulation 19 Plan was published for consultation on 1 October 2018, around 3 weeks after the conclusion of the SDC Regulation 18 consultation. SDC published their Regulation 19 Plan for consultation on 18 December 2018 and so the fact is the plan-making timescales and processes in Tonbridge and Malling and SDC were actually closely aligned. We can find no credible reason why the Councils could not have engaged constructively and actively during the plan making process in accordance with the duty on them to engage constructively with each other in a meaningful attempt to resolve issues relating to unmet needs.
31. Whilst resolution to the problem of unmet housing needs is not a prerequisite to the Council being able to demonstrate compliance with the DtC, earlier, constructive, active and ongoing engagement, in line with the Act and national policy as articulated in the Framework and PPG, would have been much more likely to result in an effective strategy for meeting SDC's need, whether within the SDC area or elsewhere. Even if in this case the Council considered it unrealistic to contemplate a joint local plan at this point, it might have considered other less formal mechanisms of compliance with the duty, such as aligning plan time-tables and policies and/or joint approaches to plan-making. Any steps of that kind would have demonstrated positive proactive attempts at cooperation.

32. The Council's hearing statement<sup>11</sup>, submitted to SDC's examination, explains the Council's view that it would be unreasonable to expect it to accommodate any unmet housing need for SDC because it faces similar constraints and challenges, is planning to meet its own need in full, and market and infrastructure capacity mean any such external need could not be accommodated. In the circumstances, these could have all been valid issues for discussion and engagement between both authorities, but there is no evidence to indicate that they were actually the subject of any constructive engagement between the authorities.
33. The Council advise that once the actual SDC unmet need is examined and established, they would potentially seek to deal with it through a future review of the Plan. However, such an approach is not in the spirit of the Act or of national policy. The identified need for housing exists now, and the likely existence of unmet need has been known about for some time and is therefore a strategic matter that should have been considered through the DtC in the current round of local plans, not delayed to some future date. Deferring the issue to subsequent plans does not amount to constructive, active engagement, especially when the plan making processes were, in reality, closely aligned.
34. Memorandums of Understanding (MoU) were signed after the submission of both plans and provide no evidence of constructive and active engagement prior to the submission of the Plan and are therefore of no help in demonstrating the DtC has been met. Indeed, the short final MoU simply states, *'TMBC's evidence of meeting the Duty is set out in the Duty to Cooperate Statement (January 2019). The strategic cross-boundary matters and how the Duty was addressed are summarised in section 8 of the DtC Statement. The details are set out in sections 9 to 16. The record of engagement is documented in Appendix A'*. As set out above, the Statement provides no reference to the unmet housing need in SDC. Appendix A is a list of meetings that took place between April 2012 and January 2019 with various organisations, but no minutes have been provided from any of these meetings to show that unmet housing need in SDC was discussed, and moreover from careful consideration of the verbal evidence given by the Council at the hearing sessions, it would seem that it was not discussed at any of the meetings. The only discussion was about the constraints all of the Council's in the HMA were facing in meeting their housing need. Simply discussing constraints does not in itself amount to cooperation.
35. This shortcoming is surprising given that the Council were involved in the pilot scheme (West Kent Statement of Common Ground Pilot Project) with PAS looking at the use of Statements of Common Ground in plan making. Indeed,

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<sup>11</sup> Paragraph 13.19 of Tonbridge & Malling Borough Council Position Statement (ED58)

as part of this project, the Council, SDC, and Tunbridge Wells Borough Council all agreed in April 2018 that the need to address the matter of unmet housing need was the most significant issue to be addressed in any Statement of Common Ground<sup>12</sup>. This also shows that by April 2018 the Council and SDC had acknowledged that it remained unlikely SDC would be able to meet its housing need in full<sup>13</sup> and despite this, there is no evidence of cross boundary working with SDC and others as a way of seeking to ensure that housing needs were met in full across the HMA. Moreover, the NPPF at paragraph 181 provides advice to LPAs on how to demonstrate evidence of effective cooperation in relation to cross-boundary impacts. This suggests the use of, among other things, memorandums of understanding. It adds that 'cooperation should be a continuous process of engagement from initial thinking through to implementation...'. There is no evidence that this approach was followed.

36. Despite knowing that, as early as 2017, SDC was indicating it would be likely to have unmet housing need, it is reasonable for us to conclude on the basis of everything that we have considered that the Council failed to engage constructively, actively and on an ongoing basis with SDC on that strategic matter. An active process of ongoing, active and constructive engagement might or might not have led to a more positive outcome despite the constraints of market capacity, infrastructure capacity, Green Belt and AONB designations. However, what is certain is that, if parties choose not to engage with each other, there will be little prospect of difficult but important cross-border issues being resolved in relevant strategic matters. If there is no cooperation on such matters, then the effectiveness of plan preparation is unlikely to be maximised.

**If a plan is found to have failed the DtC, is it possible to proceed with the Examination?**

37. In a letter to the Planning Inspectorate, dated 18 June 2019, the Secretary of State stressed to Inspectors the importance of being pragmatic in getting a plan in place that, in line with paragraph 35 of the 2019 NPPF, represents a sound plan for the authority.
38. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This 2015 letter also stresses the importance of Inspectors working in a pragmatic way with councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within 5 years of adoption, giving councils the option to undertake

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<sup>12</sup> Sevenoaks District Council v Secretary of State for Housing Communities and Local Government [2020] EWHC 3054 (Admin)

<sup>13</sup> ED69A, Appendix D, paragraph 6.3

further work to address shortcomings identified at examination and highlighting significant issues to councils very early on and giving councils the full opportunity to address issues. However, the failure we have identified cannot be remedied during the examination since any failure in DtC cannot be resolved after submission of the Plan because the duty relates to the period of plan preparation which has ended. Once we had considered all of the evidence pertaining to DtC presented in writing and orally at the hearing sessions we immediately notified the Council of our concerns and cancelled the future hearings. We gave the Council opportunities, prior to the hearing sessions, during the hearing sessions and afterwards, to provide additional evidence confirming its approach to complying with the DtC undertaken prior to the submission of the Plan for examination.

39. In examining the Plan we have had this advice in the forefront of our minds and we have worked in a pragmatic way with the Council towards achieving a sound plan as far as practicable. However, we have identified a failure of legal compliance in relation to the DtC.
40. It is reasonable for us to conclude that the DtC, as set out in section 33A of the Act, has not been met.

## **Overall Conclusion and Recommendation**

41. The DtC in Section 33A of the 2004 Act has not been met for the reasons set out above and we, therefore, recommend that the Plan is not adopted.

*Louise Crosby and Luke Fleming*

Inspectors



The Planning Inspectorate

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# **Report to Sevenoaks District Council**

**by Karen L Baker DipTP MA DipMP MRTPI**

**an Inspector appointed by the Secretary of State**

**Date 2 March 2020**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Sevenoaks District Local Plan**

The Plan was submitted for Examination on 30 April 2019.

The Examination Hearings were held between 24 and 26 September 2019 and between 1 and 3 October 2019.

File Ref: PINS/G2245/429/7

## **Abbreviations used in this Report**

DtC	Duty to Co-operate
HMA	Housing Market Area
HPS	Hearing Position Statement
IPe	Intelligent Plans and Examinations
the Plan	Sevenoaks District Local Plan
MHCLG	Ministry of Housing, Communities and Local Government
MM	Main Modification
NPPF	National Planning Policy Framework
OAN	Objectively Assessed Need
PAS	Planning Advisory Service
PPG	Planning Practice Guidance
SoCG	Statement of Common Ground
SHMA	Strategic Housing Market Assessment

## **Non-Technical Summary**

This Report concludes that the Sevenoaks District Local Plan (the Plan) is not legally compliant in respect of the Duty to Co-operate (DtC) and, as such, I recommend that the Plan is not adopted.

## Introduction

1. This Report contains my assessment of the Sevenoaks District Local Plan (the Plan) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). The National Planning Policy Framework (NPPF) 2019 makes it clear in paragraph 35 that local plans are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. It goes on to say that in order to be sound, a local plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the Examination is the assumption that the local planning authority has submitted what it considers to be a legally compliant and sound plan. The Sevenoaks District Local Plan Proposed Submission Version<sup>1</sup>, dated December 2018 and submitted on 30 April 2019, is the basis for my Examination. It is the same document as was published for consultation between 18 December 2018 and 3 February 2019.
3. This Report considers whether the Local Plan's preparation has complied with the Duty to Co-operate (DtC). Given my conclusions in respect of the DtC, I do not go on to consider whether the Plan is sound and whether it is compliant with the other legal requirements. If a local planning authority cannot demonstrate that it has complied with the Duty at the independent Examination of their Local Plan, then Section 20(7A) of the Act requires that the Examiner must recommend non-adoption of the local plan. This is the situation in this case, and it is not, therefore, necessary for me to consider the other matters further in this Report.
4. Hearing sessions were held between 24 and 26 September 2019 and between 1 and 3 October 2019. These focussed on legal compliance matters, including the DtC, and matters of soundness in relation to the Local Plan Strategy, Green Belt, Housing Need, Housing Requirement, Housing Distribution and Housing Supply, along with the Sustainability Appraisal.
5. Further Hearing sessions were planned as part of this Examination between 5 and 7 November 2019 and between 12 and 14 November 2019 to consider other soundness matters including: individual housing allocations; Gypsy and Traveller provision and allocations; employment need, requirement, distribution and supply; individual employment allocations; transport and infrastructure; the historic environment; open space, recreation and community facilities; the natural environment and biodiversity; climate change, flooding and water management; and, health, well-being and air quality. However, following my consideration of the evidence presented by the Council and other participants in response to my Matters, Issues and Questions<sup>2</sup> at the Hearing sessions during the first two weeks, and taking into account the written representations and discussion at those Hearing sessions, I had significant concerns in respect of legal compliance, namely the DtC, and soundness.

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<sup>1</sup> SDC001

<sup>2</sup> ED8

6. Following the first two weeks of Hearing sessions, I notified the Council in my letter<sup>3</sup>, dated 14 October 2019, that I had significant concerns about a number of aspects of the Plan, both in terms of legal compliance and soundness. This letter also stated that, given these concerns, I had asked the Programme Officer to cancel the further Hearing sessions planned for November and that I was preparing a letter setting out my thoughts in more detail which would be with the Council shortly afterwards. It also confirmed that I would not reach any final conclusions on the way forward for the Examination until I had had the opportunity to consider the Council's response to that letter.
7. Although I had concerns regarding soundness, these were issues which I would have needed to explore further, it is the failure to comply with the legal DtC which necessitated a halt to the Examination proceedings. Any failure in the DtC cannot be rectified once the Plan has been submitted for Examination because the DtC applies specifically to Plan preparation, and Plan preparation ends when the Plan is submitted for Examination.
8. My letter<sup>4</sup> to the Council, dated 28 October 2019, set out my concerns with regards to the DtC in some detail. The Council submitted responses<sup>5</sup> to this and to my earlier letter, along with a number of appendices. I replied<sup>6</sup> on 19 November 2019 to say that I would be responding after the pre-Election period, in line with the Planning Inspectorate's published position in this regard.
9. Having fully considered the Council's responses and appendices, my final letter<sup>7</sup> to the Council, dated 13 December 2019, set out my conclusions on this matter and stated that, unless the Council confirmed that it intended to withdraw the Plan from Examination, the only course of action open to me would be to prepare a Report concluding that the Plan is not legally compliant in respect of the DtC and recommending that it should not be adopted. In its letter<sup>8</sup>, dated 3 January 2020, the Council confirmed that it would not be withdrawing the Plan from Examination and asked that I issue my Report as soon as possible.

### **Main Modifications**

10. I have found a failure in respect of the DtC and, as such, I have no option but to recommend that the Plan should not be adopted. Accordingly, I have not concluded on any other matters in connection with the Plan and, as a result, I would not be able to recommend any Main Modifications [MMs].

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<sup>3</sup> ED37

<sup>4</sup> ED40

<sup>5</sup> ED38, ED38A, ED41, ED42, ED42A, ED42B and ED42C

<sup>6</sup> ED43

<sup>7</sup> ED44

<sup>8</sup> ED45

## Assessment of Duty to Co-operate

### ***Has the Council demonstrated that it has engaged constructively, actively and on an on-going basis in the preparation of the Local Plan?***

11. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by Section 33A in respect of the Plan's preparation.
12. Section 33A requires that a local planning authority co-operates with other local planning authorities, the County Council and prescribed bodies or other persons in relation to the preparation of the Plan. This duty requires the Council to engage constructively, actively and on an on-going basis in the preparation of the Plan, so far as it relates to a strategic matter. A strategic matter includes the sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas.
13. Government policy, set out in paragraph 26 of the NPPF, says that effective and ongoing joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. It goes on to say that, in particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere. Co-operation is, therefore, about maximising the effectiveness of plan preparation.
14. The Plan, as submitted, identifies a need for 13,960 dwellings between 2015 and 2035, but sets out a requirement for 10,568 dwellings, which would amount to an unmet need of 3,392 dwellings. The Council advanced a position<sup>9</sup> during the Examination which sought to reduce the unmet need. However, it would still have left an unmet need of 1,316 dwellings, even if I had agreed with the Council's position.
15. It is common ground between the Council and most parties to the Examination that housing is a strategic matter upon which the Council should engage constructively, actively and on an on-going basis with its neighbours. I concur with this view. The Council published a DtC Statement<sup>10</sup> in May 2019, following the submission of the Plan for Examination, which sets out the activities undertaken by the Council, including meetings with neighbouring authorities, at both Officer and Member level, and the production of a joint evidence base with neighbouring authorities in the West Kent Housing Market Area<sup>11</sup> [HMA].

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<sup>9</sup> Housing Supply Update Paper – C2 Update [ED23]

<sup>10</sup> SUP006 and SUP006a-d

<sup>11</sup> The West Kent Housing Market Area includes Sevenoaks District Council, Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council.

16. Whether the DtC has been complied with is a matter of judgement for the examining Inspector following consideration of the evidence presented by the Council and other participants, both in writing and at the Hearing sessions.
17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment<sup>12</sup> (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area<sup>13</sup> (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.
18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement<sup>14</sup> and Appendices<sup>15</sup> and in Appendix 1: Schedule A<sup>16</sup> attached to its letter<sup>17</sup>, dated 18 November 2019, with the minutes of most of these meetings<sup>18</sup> provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group<sup>19</sup> and the West Kent Statement of Common Ground (SoCG) Pilot Programme group<sup>20</sup>.
19. The minutes<sup>21</sup> of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues

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<sup>12</sup> Sevenoaks and Tunbridge Wells Strategic Housing Market Assessment, prepared by GL Hearn Limited, September 2015 [HOU001]

<sup>13</sup> The West Kent HMA includes Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council

<sup>14</sup> SUP006

<sup>15</sup> SUP006a, SUP006b, SUP006c and SUP006d

<sup>16</sup> ED42A

<sup>17</sup> ED42

<sup>18</sup> No minutes have been provided of the meetings held on 6 December 2017, 22 January 2018 and 14 March 2018, although summaries of the meetings on 22 January 2018 and 14 March 2018 are provided in the West Kent Statement of Common Ground (SoCG) Pilot Project Facilitator's Note, dated 3 April 2018 (updated by the amended version of this note dated 10 April 2018 and submitted by the Council as part of its Appendix 3: Duty to Co-operate Appendices [ED42C]).

<sup>19</sup> This group is made up of the three West Kent Housing Market Area (HMA) authorities, namely Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council.

<sup>20</sup> This group, facilitated by the Planning Advisory Service (PAS), also included the West Kent HMA authorities.

<sup>21</sup> Pages 172-174 of SUP006a

and Options (Regulation 18), do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary<sup>22</sup> of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPe), held on 22 January 2018, set out in the Facilitator's Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

20. The notes<sup>23</sup> of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks 'is testing options to assess the way forward'. The summary<sup>24</sup> of the meeting, held on 14 March 2018, set out in the Facilitator's Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated. The Facilitator's Note<sup>25</sup> does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say<sup>26</sup> that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.
21. The Council has since stated, in Appendix 1: Schedule A<sup>27</sup> to its letter<sup>28</sup>, dated 18 November 2019, that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect, as it referred to Sevenoaks District Council planning to meet its OAN in full. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note<sup>29</sup>, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are

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<sup>22</sup> Page 185 of SUP006a

<sup>23</sup> Pages 182-183 of SUP006a

<sup>24</sup> Page 185 of SUP006a

<sup>25</sup> Paragraphs 5.1 and 5.2

<sup>26</sup> Paragraph 6.1

<sup>27</sup> ED42A

<sup>28</sup> ED42

<sup>29</sup> West Kent SoCG Pilot Project Facilitator's Note, dated 10 April 2018, set out in 2a of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that 'the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue'. Paragraph 6.6 concludes that, 'each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need. Thus, the Councils are not yet in a position to reach agreement on the matter of housing supply'. As such, it is apparent that, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.
23. The minutes<sup>30</sup> of the West Kent Dtc meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the Dtc meetings refer to addressing the unmet need in Sevenoaks is at the Dtc meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted<sup>31</sup> that 'officers discussed the potential requirement for a follow up letter<sup>32</sup> to request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.
24. Although the Dtc statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.
25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have

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<sup>30</sup> Pages 191-192 of SUP006a

<sup>31</sup> Page 194 of SUP006a

<sup>32</sup> Letters were sent to neighbouring authorities requesting that they assist with Sevenoaks' unmet housing need in April 2019.

not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>33</sup> within the HMA.

26. In paragraph 13.2 of its HPS, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers 'did not receive any formal requests to address unmet housing need' from Sevenoaks District Council.
27. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.
28. In paragraph 1.04 of its HPS, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.
29. I appreciate that these neighbouring authorities say<sup>34</sup> that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does

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<sup>33</sup> Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council

<sup>34</sup> Letters dated 21 and 27 November 2019 set out in 3a and 3b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.

*Statements of Common Ground*

30. In order to demonstrate effective and ongoing joint working, paragraph 27 of the NPPF says that strategic policy-making authorities should prepare and maintain one or more Statements of Common Ground (SoCGs), documenting the cross-boundary matters being addressed and progress in co-operating to address these. These should be produced using the approach set out in national planning guidance and be made publicly available throughout the plan-making process to provide transparency.
31. The Council has submitted a number of SoCGs<sup>35</sup> as supporting documents, some of which were provided following the submission of the Plan for Examination, on 30 April 2019. These include several SoCGs with neighbouring authorities, including Tunbridge Wells Borough Council<sup>36</sup> and Tonbridge and Malling Borough Council<sup>37</sup>, which were signed on 21 and 30 May 2019 respectively. The agreed actions within these documents in respect of housing are to 'engage through the wider DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London's growth, large scale developments and opportunities for meeting any unmet need' and to 'undertake a 5 year review of the Local Plan'; and, 'to engage through the wider DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to strategic housing matters' respectively.
32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email<sup>38</sup> to MHCLG, dated 15 March 2019, the Council says that it 'is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.' However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They imply that these matters will be dealt with in any review of the Plan. However, the Duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination.
33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.
34. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents engagement in relation to a solution in the future, not the submitted Plan. At the DtC Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders'

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<sup>35</sup> SUP007a – SUP007i

<sup>36</sup> SUP007h

<sup>37</sup> ED6

<sup>38</sup> Email from James Gleave, dated 15 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan.

*The timing of engagement*

35. The Council refers to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. The Council says, in its letter<sup>39</sup> dated 18 November 2019, that it 'could have gone back to neighbours at this point', but decided not to, as it was felt that, as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated, 'it was therefore extremely unlikely that a higher unmet need would be met elsewhere'. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.
36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that 'all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other' at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that 'at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.' However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.
37. The full extent of unmet need only became apparent to the Council following the consideration of the responses to the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs. This would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage. However, there is no evidence to show that this occurred. Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have

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<sup>39</sup> ED42

been able to accommodate some of Sevenoaks' unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.
39. It is noted that neighbouring authorities have not indicated any willingness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks' housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need.

#### *Peer Review*

40. The peer review process undertaken by the Council consisted of advice<sup>40</sup> from Intelligent Plans and Examinations (IPE) in November 2018; a PINS' Advisory Visit<sup>41</sup> in February 2019; MHCLG advice<sup>42</sup>; and, a review of the Plan and PAS Workshop<sup>43</sup> on 24 April 2019.
41. The advice from IPE following its meeting with the Council on 1 November 2018, considered several matters, including housing need and delivery, however, it made no mention of the extent of unmet housing need in the District, or how this could be addressed. The purpose of the PAS Workshop, which was held six days before the Plan was submitted for Examination and led by IPE, was 'to provide advice on the implications of the DtC for the soundness assessment of the Plan' and 'to meet with neighbouring authorities,

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<sup>40</sup> Revised Note in respect of the preparation of the Sevenoaks Local Plan, prepared by Laura Graham of IPE, dated 4 December 2018, set out in 1a of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>41</sup> PINS Advisory Visit Note, prepared by Inspector Jonathan Bore, dated 6 February 2019, set out in 1b of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>42</sup> MHCLG correspondence, meeting 6 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>43</sup> Note on the Duty to Co-operate and the Local Plan, prepared by IPE, dated 7 May 2019, set out in 1d of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

so they could outline their respective positions regarding meeting development needs in West Kent.'

42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings<sup>44</sup> in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan<sup>45</sup>, prepared by IPe, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement<sup>46</sup>. This note concludes that 'none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working'.
43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, the PAS Workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.
44. The Council says that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, several points were raised in relation to the DtC at the Advisory Visit<sup>47</sup> carried out by the Planning Inspectorate in February 2019, as set out in the note<sup>48</sup> of this meeting.
45. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet need and that it could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

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<sup>44</sup> This revised figure took account of proposed changes to the Plan period being put forward by the Council for consideration during the Examination.

<sup>45</sup> ED42B

<sup>46</sup> SUP006, SUP006a, SUP006b, SUP006c and SUP006d

<sup>47</sup> The Planning Inspectorate carries out Advisory Visits to local planning authorities ahead of submission to provide advice on procedures and to help them achieve a sound plan.

<sup>48</sup> The PINS Advisory Visit Meeting Note is set out in 1b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C].

46. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS Workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the DtC Statement was not submitted until May 2019. Nor would it have had the benefit of the time available to an Inspector for the examination of that detailed and complex evidence or the discussion at the Hearing sessions.
47. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement<sup>49</sup> in May 2019, in which it states that 'KH<sup>50</sup> advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPe<sup>51</sup>, submitted in November 2019, does not state that the DtC has been met or that KH advised that this was the case.
48. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective.

*If a Plan is found to have failed the Duty to Co-operate, is it possible to proceed with the Examination?*

49. The Secretary of State wrote to the Planning Inspectorate, on 18 June 2019, in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority.
50. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also stresses the importance of Inspectors working in a pragmatic way with Councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.
51. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to

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<sup>49</sup> SUP006d

<sup>50</sup> KH was Keith Holland of IPe, working on behalf of PAS.

<sup>51</sup> ED42B

proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.
53. For the reasons set out above the DtC set out in Section 33A has not been complied with.

## **Overall Conclusion and Recommendation**

54. The DtC in Section 33A of the 2004 Act has not been complied with for the reasons set out above and I, therefore, recommend that the Local Plan is not adopted.

*Karen L Baker*

Inspector



Neutral Citation Number: [2020] EWHC 3054 (Admin)

Case No: CO/1417/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13/11/2020

**Before :**

**MR JUSTICE DOVE**

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**Between :**

**Sevenoaks District Court**  
**- and -**  
**Secretary of State for Housing Communities and**  
**Local Government**

**Claimant**

**Defendant**

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**Ms Saira Kabir Sheikh QC and Charles Merrett (instructed by Sharpe Pritchard) for the**  
**Claimant**  
**Richard Moules (instructed by GLD) for the Defendant**

Hearing dates: Thursday 3rd September 2020  
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**Approved Judgment**

## **Mr Justice Dove :**

### Introduction

1. The claimant is a local planning authority who prepared the Sevenoaks District Local Plan (“the SDLP”) for its administrative area. The claimant challenges the decision of the Inspector appointed by the defendant to undertake the examination of the SDLP who concluded that the claimant had failed to comply with the duty to cooperate set out in section 33A of the Planning and Compulsory Purchase Act 2004. The claim is advanced by the claimant on four grounds. The first ground is that the Inspector erred in law in failing to apply a margin of appreciation when considering the test under section 33A of the 2004 Act. Ground 2 is the contention that the Inspector failed to correctly interpret and apply the duty to cooperate, and in reality conflated that duty with the requirement that a plan be sound. Ground 3 is that the Inspector failed to have regard to material considerations and in particular to consider the material evidence that was placed before her. Finally, Ground 4 is a challenge based on the contention that the Inspector’s reasons were inadequate.
2. This judgment will firstly set out the facts in relation to the case, secondly, rehearse the relevant legal framework and, thirdly, deal with the submissions advanced and the conclusions reached in relation to the four grounds on which this application is advanced.

### The facts

3. The claimant’s administrative area contains a significant element of Green Belt as well as areas which are designated as an Area of Outstanding Natural Beauty. Its district forms part of the West Kent Housing Market Area (the “HMA”) and has further functional and economic relationships with London boroughs to the north of its administrative area.
4. The claimant began the preparation of its proposed SDLP in 2015 and at that time the evidence for it started to be collected. In September 2015 a Joint Strategic Housing Market Assessment (“SHMA”) was published, having been prepared jointly for the HMA by the claimant together with the other local planning authorities in the HMA: Tunbridge Wells and Tonbridge and Malling Borough Councils. Other technical work in relation to the assessment of the Green Belt and provision for gypsies and travellers was prepared by the claimant. The claimant undertook two rounds of consultation under the provisions of Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012, the first in relation to issues and options in August 2017, and then a further consultation on the draft SDLP from July through to September 2018. In a witness statement before the court to explain the factual background to the preparation of the SDLP, James Gleave, who is the Strategic Planning Manager for the claimant, explains that at the Regulation 18 stage of plan preparation the extent of any unmet housing need as a result of the SDLP’s proposals was unknown “because views were still being gathered on what the Plan ought to contain and the council’s ‘call for sites’ process remained open until October 2018”. Thus, Mr Gleave observes, that it was not clear what proportion of unmet housing need might arise in the claimant’s district.

5. Between 8 December 2018 and 3 February 2019 the claimant undertook the consultation required by Regulation 19 of the 2012 Regulations on the SDLP in its proposed submission version. The proposed submission version identified that based upon the defendant's standard methodology the annualised housing need for the claimant's district was 698 dwellings, giving rise to a total of 13,960 dwellings over the 20-year plan period from 2015 to 2035. The housing land supply which was proposed in the SDLP was 10,568 dwellings or approximately 75% of the total housing need derived pursuant to the standard methodology. The plan was submitted for examination on the 30 April 2019.
6. For the purposes of the examination the claimant prepared a Duty to Cooperate Statement ("the Statement") setting out its case and the evidence in support of the conclusion that the duty to cooperate had been satisfied in the preparation of the SDLP. The Statement presents the evidence in a number of themes. Firstly, it alludes to the preparation of a joint evidence base, referring to the SHMA set out above and other studies and plans which were jointly prepared with relevant authorities. Secondly, the Statement refers to discussions which had occurred with a wide variety of statutory bodies ranging from Natural England and the Environment Agency to Highways England and Network Rail. The Statement then turns to discussions with neighbouring authorities. Reference is made to the Kent Planning Officer's Group as a forum (complemented by the Kent Planning Policy Forum) which meet regularly to discuss common issues in relation to plan making and allied concerns. Annexed to the statement are the notes of meetings with other public bodies, and in particular neighbouring authorities, which had occurred since the outset of preparation of the SDLP in 2015. The statement then records the statements of common ground which had been signed with a wide variety of local authorities and public bodies in respect of the various cross-boundary strategic issues which were engaged with the SDLP process. Alongside this documentation the Statement also set out discussions which had taken place at an elected member level with adjoining local authorities and briefings which had occurred with local MPs. Finally, the Statement also sets out the elements of peer review to which the SDLP process had been subject since the Regulation 18 draft consultation.
7. Whilst it is clear that the duty to cooperate, so far as it was relevant to the SDLP process, engaged a number of strategic issues, for the purposes of this judgment it is necessary to focus upon the strategic issue of housing need since, as will be seen, that was the issue which was principally of concern to the Inspector. In that connection it is necessary to set out the contents of the statements of common ground with, in particular, the neighbouring authorities of Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council, along with the conclusions of the peer review which was undertaken and relied upon in relation to the housing issue.
8. A statement of common ground was agreed between the claimant and Tonbridge Wells Borough Council on the 21 May 2019. Having set out the issue in relation to unmet housing need within the SDLP the statement of common ground records as follows:
  - “2.1.5 Discussions have taken place with neighbouring authorities in the HMA to discuss assistance with any unmet need, but no authority has been in a position to assist SDC with its unmet need.

2.1.6 TWBC is currently preparing its second Regulation 18 version of the Draft Local Plan for consultation, which includes the vision, objectives and growth strategy, overarching strategic policies, place shaping policies and detailed Development Management Policies.

2.1.7 TWBC is also constrained by the Green Belt (22%) and the Area of Outstanding Natural Beauty (70%) as well as areas of flood risk and traffic congestion. The Regulation 18 Draft Local Plan identifies the need for 13,560 dwellings in accordance with the Standard Methodology. Taking into account homes already built since 2013 and sites benefiting from planning permission and allocations within the existing Site Allocations Local Plan, TWBC is aiming to allocate land to meet the remaining balance of 8,914 (Note: this is still subject to change following ongoing work) dwellings. TWBC is seeking to meet its full objectively assessed need across the borough through development at a number of settlements, strategic release of Green Belt at Paddock Wood/Capel to allow expansion of the settlement and a new garden settlement within the Green Belt at Tudeley also within Capel Parish.

2.1.8 It is understood that, at present, TWBC is unable to assist SDC with unmet housing need, due to the constraints on both local authorities, and their inability to meet housing needs beyond their own, irrespective of unmet needs elsewhere.

2.1.9 Consequently, both councils will continue to work together and identify the position as both TWBC and SDC prepare to review their Local Plan every 5 years.

#### Actions

TWBC and SDC will engage through the wider Duty to Cooperate forum with other neighbouring authorities outside the West Kent housing market area in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London growth, large scale developments and opportunities for meeting any unmet need.

TWBC and SDC to each undertake a 5 year review of their respective Local Plans.”

9. The position in the statement of common ground is supported by the material contained within Tunbridge Wells Borough Council’s Hearing Position Statement for the purposes of the examination. The Hearing Position Statement observes that up until 11 April 2019 there had been discussions in relation to matters, including the meeting of housing need, and that those discussions were reflected in the observations made by Tunbridge Wells Borough Council during the Regulation 19 consultation, where they stated that there should be no presumption that there was any capacity within the Tunbridge Wells Borough Council area to accommodate unmet need from another

authority area. The Hearing Position Statement records that on the 11 April 2019 Tunbridge Wells Borough Council received a communication from the claimant formally asking whether or not they were in a position to meet any of the claimant's unmet housing need. At the duty to cooperate workshop on the 24 April 2019 (which is addressed further below) Tunbridge Wells Borough Council made clear that they would not be able to meet any of the claimant's unmet housing need. The Hearing Position Statement does however record as follows:

“1.06 It is considered pertinent to note that if the request from SDC to meet its unmet need had been made at any point prior to the submission of TWBC's comments on Sevenoaks regulation 19 representations then those representations would have addressed this issue more fully.”

The Hearing Position Statement goes on to record the observations made within the Statement of Common Ground and set out above and to indicate that the position from their perspective remained the same.

10. Tonbridge and Malling Borough Council also provided a hearing statement for the purposes of the examination. In their hearing statement they explain that during the consultations on both the Regulation 18 and Regulation 19 versions of their own Local Plan they had not received any request from the claimant to address unmet housing need. In the hearing statement they set out that there had been regular meetings between Tonbridge and Malling Borough Council and the claimant to address cross-boundaries strategic matters engaging the duty to cooperate. The essence of the position which they placed before the Inspector is set out in the following paragraphs of their hearing statement:

“13.5. It is evident that TMCB faces similar constraints and challenges to Sevenoaks District Council for that part of the Borough covered by the West Kent HMA. However, TMBC's response during plan-making has and continues to be significantly different to that of Sevenoaks District Council.

13.6. TMCB has responded positively to the Government's policy for plan-making by addressing in full its assessed need for housing plus some flexibility to adapt to rapid change. This is summarised in the TMBC Spatial Topic Paper. This has been challenging but TMBC understands that if suitable patterns of development are to be delivered and if the Local Plan is to positively address the acute need for housing, as demonstrated by the median housing affordability ratio, then sufficient sites need to be allocated for development to ensure there is no unmet need. This includes the removal of approximately 160 hectares of land from the Green Belt in the West Kent HMA to provide for residential development, as explained in the TMBC Green Belt Exceptional Circumstance Topic Paper.

13.7 Before addressing the matter of whether or not the unmet housing need could be accommodated in Tonbridge & Malling Borough it is important to first question whether it is reasonable

for Sevenoaks District Council to expect TMBC to address it. Given the similarities between the two authorities (see above), TMBC considers that it is entirely inappropriate to ask the Borough Council to accommodate unmet housing need in an area with the same constraints that have been dismissed by Sevenoaks District Council. It is important to bear in mind that the part of Tonbridge & Malling Borough falling within the West Kent HMA is wholly within the Green Belt (with the exception of the settlements not washed over by the designation).

13.8 If Sevenoaks District Council had adopted a similar positive approach to meeting the housing development needs of their area in full, it is possible that there would be significantly less or no unmet need to consider. It is unreasonable to expect TMBC to not only meet their assessed need for housing in full but to accommodate unmet housing need from Sevenoaks District Council who are facing similar constraints.

...

13.19 To conclude, it would be unreasonable to expect Tonbridge & Malling Borough Council to accommodate unmet housing need from Sevenoaks District Council given that TMBC is facing very similar constraints and challenges and is planning to address in full its own assessed housing need. Not only would it be unreasonable but factors including Housing Market Areas, market capacity and infrastructure mean that TMBC could not accommodate the identified unmet housing need.”

11. In addition to the contributions made by the local authorities directly concerned in the duty to cooperate, representations were also made, in particular to the examination process, by other parties who were interested in the issue. Representations were made both for and against the conclusion that the duty to cooperate had been satisfied in the present case. Whilst some reliance was placed upon this material by both parties at the hearing of this case, it suffices to record that there were a number of participants in the examination who maintained that the claimant had not complied with the duty to cooperate and that this was a fundamental flaw in the preparation of the SDLP.
12. As set out above the claimant placed reliance in support of its contention that the duty to cooperate had been satisfied upon the peer review of the plan process which had been commissioned as a cross-check in relation to the process. The first element of this work was the invitation extended by the Planning Advisory Service (“PAS”) to the claimant to participate in a pilot project in relation to the preparation of statements of common ground. This invitation was extended to and accepted by both the claimant and also Tonbridge Wells Borough Council and Tonbridge and Malling Borough Council. The programme led to a sequence of meetings, culminating in the preparation of notes reflecting the outcome of the project, dated the 3 April 2018. Paragraph 5.2 of the note of the discussions indicates that the need to address the matter of unmet housing need was acknowledged on all sides as the most significant issue that needed to be addressed in any statement of common ground between the parties. The note then considers the question of housing need in the three districts in the HMA, and from paragraph 6.1

onwards sets out the position in each of the authorities, and thereafter at paragraphs 8.4-8.5 notes the risks in the current position. The note provides as follows:

“6.1 Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017. In Sevenoaks the OAN of 11,740 (578 dpa) compares with an indicative figure of 13,960 (698 dpa) based on the government’s standardised methodology. In Tunbridge Wells the SHMA gives an OAN of 696dpa, which is consistent with the government’s indicative figure of 692 dpa using the proposed standard methodology.

6.2 The situation in Tonbridge and Malling is more complex. The evidence base, which includes an up to date SHMA covering 2 housing market areas, gives an OAN of 696 dpa. This is significantly lower than the indicative figure of 859 dpa using the proposed standardised methodology. Members have agreed to continue with 696 dpa figure. The Council accepts the standardised methodology and will reflect this as national policy in its Local Plan. However it proposes to demonstrate that the higher figure is undeliverable based on past trends and capacity issues. This position will be supported by evidence including the housing deliverability study prepared by G L Hearn in September 2017. The Council’s concerns are clarified in more detail in its consultation response to Planning for the Right Homes in the Right Places.

6.3 The emerging Tonbridge and Malling Local Plan, if it continues to propose a housing supply which is lower than the standardised OAN, clearly presents a risk to finalising an agreed SoCG. Whilst at present neither Sevenoaks or Tunbridge Wells will require Tonbridge and Malling to accept unmet need, it is possible that the reverse may apply. Even if all three Councils sign up to a SoCG which includes a lower housing figure for Tonbridge and Malling than the standard methodology indicates, this could be undermined when its Local Plan is examined.

...

8.4 The greatest risk to this SoCG is the decision by Tonbridge and Malling to continue plan for a level of housing supply which is below the OAN identified by the government’s standard methodology. As Tonbridge and Malling takes its Local Plan forwards it will be relying on evidence which states that capacity and delivery issues prevent it from states that capacity and delivery issues prevent it from meeting the higher OAN.

8.5 Whilst both Sevenoaks and Tunbridge Wells are aiming to meet their standard methodology OANs, both are heavily

constrained by green belt and infrastructure issues and are unlikely to be capable of accommodating unmet need from Tonbridge and Malling. This pilot project is not the appropriate place to address this matter in detail. However if the final SoCG is to have any real meaning and to be robust in supporting the three Local Plans there will need to be some hard talking within the group on this matter. This is a potential showstopper in terms of the utility of the SoCG and its capability of serving its desired purpose”

13. At a later stage it emerged that the note of the 3 April 2018 (which the claimant had included within the appendixes to the statement) had in fact been superseded in a subsequent note dated 10 April 2018. It seems that the representative of Tonbridge and Malling Borough Council had, in response to receipt of the 3 April 2018 draft, made suggestions in relation to amendments to the draft, including the observation that the claimant would have elements of unmet housing need. Thus, paragraphs 6.1 and following of the note were redrafted as follows:

“6.1 During the short lifespan of this pilot project there have been several changes to both the policy background, for example the revised draft of the NPPF issued for consultation on 5 March 2018 and to the emerging evidence base which will support the three Local Plans. Consequently the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue. The current situation, at the end of the pilot project, is as follows.

#### Sevenoaks DC

6.2 In Sevenoaks the OAN of 12,400 compares with an indicative figure of 13,960 based on the government’s standardised methodology. With Regulation 19 submission planned to take place in early 2019 it likely to fall outside the NPPF transition period, therefore the higher figure will apply. However the district is highly constrained, with 93% of the district lying within the Green Belt and 60% within AONBs.

6.3 The Council is currently examining the potential of releasing some Green Belt land where a convincing exceptional circumstances case is made. This would mean that any proposed development would need to deliver evidenced social and community benefits as well as housing. Sites where this might be the case will be the subject of Regulation 18 consultation. This may increase the housing land supply but it remains unlikely that Sevenoaks DC Tonbridge and Malling DC will be able to meet its housing need in full.

#### Tonbridge and Malling BC

6.4 The evidence base for the Tonbridge and Malling Local Plan, which includes an up to date SHMA covering two housing

market areas, gives an OAN of 696 dpa. This is significantly lower than the indicative figure of 859 dpa using the proposed standardised methodology. However the position has changed since the pilot project began with the revised NPPF draft proposing a transitional period for introducing the standardised methodology of assessing housing need. Provided the Regulation 19 submission can be made within the transition period, as proposed by the Council, then the lower locally derived OAN can be used. This level of housing growth is considered deliverable.

#### Tunbridge Wells BC

6.5 When the pilot project commenced Tunbridge Wells BC was planning to meet its locally derived OAN as determined by the joint SHMA which was updated in 2017. The SHMA sets an OAN of 696 dpa for Tunbridge Wells, which is consistent with the government's indicative figure of 692 dpa using the proposed standard methodology. Recently updated evidence on strategic flood risk suggests that some re appraisal may be necessary, but the Council is still endeavouring to ensure that it can meet its own housing need.

#### Summary

6.6 Each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling BC is confident that it can meet its need, Sevenoaks DC and Tunbridge Wells BC have not yet completed the work needed to determine whether or not they can meet their housing need. Thus the Councils are not yet in a position to reach agreement on their housing needs. The councils are not yet in a position to reach agreement on the matter of housing supply.”

14. In autumn 2018 the claimant commissioned Intelligent Plans and Examinations (IPE) to undertake a review of the Regulation 18 draft of the SDLP, with a particular focus on the Green Belt and the question of exceptional circumstances. A meeting was held on 1 November 2018, and on the 4 December 2018 Ms Laura Graham, who had undertaken the review, produced a report of her advice. Within that advice she noted that there was “no absolute requirement in the NPPF to meet housing need”, but that if development needs could not be met outside the Green Belt it would be necessary to demonstrate through the sustainability appraisal process that the consequences of not meeting that need had been fully and properly addressed.
15. On the 17 December 2018 the claimant contacted the Planning Inspectorate (“PINS”) with a view to arranging an advisory visit in order to assess the plan which was at that stage in the midst of the Regulation 19 consultation (the Regulation 19 consultation closed on the 4 February 2019). On the 6 February 2019 the advisory visit from PINS was undertaken by an experienced Inspector, Mr Jonathan Bore. One of the important topics for discussion at that meeting was the change that the claimant was considering to altering the base date of the SDLP to 2019-35. The note of the advisory visit identifies

that the plan fell seriously short of meeting its housing need in full, based upon the standard method. In relation to the duty to cooperate the note of the meeting records as follows:

“The Duty to Cooperate

Sevenoaks haven’t sent formal letters asking other authorities to accommodate unmet need. They say they don’t want to, because no authorities are willing to help with unmet need and asking the question would sour relations with them. Some neighbouring authorities such as Tandridge may also have unmet need. There is a SoCG with other authorities and a MOU with Maidstone, but the Council did not say that there is constructive engagement among the neighbouring authorities to resolve the issue, nor could they point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated.”

16. The note goes on to record the comments on the issues made by Mr Bore at the meeting. In particular, within the comments on the issues he noted as follows:

“If the OAN really could not be accommodated within the District, I said that there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis. Currently, despite the MoU and SoCGs, this did not appear to exist in a positive form. I said that any Inspector would look closely at this in regard to whether the Duty to Cooperate had been fulfilled.”

17. The advisory visit by Mr Bore on behalf of PINS was followed by correspondence from the defendant seeking to understand how the visit had gone, and offering assistance from PAS in relation to guiding the future progress of the plan. This correspondence led to a meeting on the 6 March 2019 between Mr Gleave and a colleague from the claimant and representatives of the defendants. The notice of the meeting of the 6 March observes as follows:

“Sevenoaks asked whether MHCLG meets with LPAs on a regular basis following an Advisory Visit or whether there were particular concerns with the emerging Sevenoaks plan. MHCLG explained that following the AV the Department had been made aware that there were some potentially significant issues with housing numbers and Duty to Co-operate, and constraints including Green Belt. Given these could be potential ‘showstoppers’ MHCLG wanted to talk through the issues, find out what further work Sevenoaks may be doing in respect of these and to discuss whether there is any assistance MHCLG could provide as the authority prepares its plan for submission.

In terms of the Duty to Co-operate, Sevenoaks explained they had met regularly with neighbouring authorities at Officer and Member level to discuss x-boundary issues, of which housing

need was a standing item on the agenda. In addition, a regular Kent-Planning Officers Group was held at Kent County Council. This operates along similar lines to the ALBPO forum in London and serves to update colleagues on Local Plan preparation. Statements of Common Ground are currently being prepared with neighbours on strategic cross-boundary matters, including housing need.

...

DR advised that the balance between protecting the environment and meeting housing needs was a planning judgement that had to be made locally. SH set out that the approach the LPA took would need to be justified, both in terms of why the authority was unable to meet its own needs and the reasons behind neighbouring authorities not being asked to accommodate some of Sevenoaks needs.”

18. On the 11 April 2019 Mr Gleave, on behalf of the claimant, wrote to neighbouring planning authorities in relation to the progress that was being made in respect of the plan. They were also invited to an event which was being facilitated by PAS to be held later in the month. The correspondence contains the following in relation to the duty to cooperate:

“The Council is of the view that all authorities bordering Sevenoaks, and Kent County Council, have engaged actively and on an on-going basis to meet the provisions of the Duty to Co-operate. In particular, Statements of Common Ground (SoCGs) are in the process of being agreed to formally clarify if it is possible to meet unmet housing needs from adjoining areas. Notwithstanding the provisions of the SoCG and for the sake of completeness, I write to formally ask if is in a position to meet any of Sevenoaks’ unmet housing need as outlined above. In the event that this is not possible, I would also be grateful for your views on the preparation of a joint sub-regional strategy to address future housing requirements.”

19. The duty to cooperate workshop took place on the 14 April 2019 and a note was prepared minuting the meeting. An experienced former Inspector, Mr Keith Holland, facilitated the workshop. Updates were provided by the local planning authorities who attended and, in particular, the update from the claimant identified that the SDLP housing supply left a shortfall measured against the standard methodology requirement of approximately 1,900 dwellings across the plan period, equating to about 17%. The claimant provided a summary of the activities which they had undertaken in order to address the duty to cooperate. Following discussion of the issues a note records Mr Holland advising that in his view “SDC has done all it can and is able to demonstrate that it has satisfied the duty to cooperate requirement”. This note of the workshop then records further discussions in relation to the potential to a sub-regional strategy to address unmet housing needs across the area.

20. A note of these meetings held with PAS was also provided by IPe who undertook the work for PAS. Their note covers both the meeting which was held on the 17 April 2019 and a first meeting between Mr Gleave and his colleagues on behalf of the claimant and Mr Holland. The claimant's position as expressed in the SDLP was explained to Mr Holland in the meeting on the 17 April 2019 and noted as follows:

“2.2 The discussion focussed on the implications of the DtC for the soundness assessment of the SLP. At the time of the meeting, the Council's intention was to submit the SLP for examination at the end of the month (it was subsequently submitted on 30 April 2019). The discussion included a review of advice provided by Laura Graham of IPe and Jonathan Bore from the Planning Inspectorate (PINS). SDC feels that there is a degree of inconsistency between the PINS advice and that provided by IPe. SDC believe that the advice from PINS is based on a misunderstanding of the approach being adopted by the SDC. In the view of the SDC, PINS failed to fully appreciate that the council attempts unmet housing need as an exceptional circumstance justifying consideration of Green Belt (GB) land release. What PINS calls a “Council imposed impediment” (the provision of infrastructure for the existing community) is not the defining exceptional circumstance consideration – it is simply the logical requirement that any development in the GB needs to be accompanied by adequate infrastructure. In other words, SDC believes that PINS has placed too much emphasis on the infrastructure point and not enough on the unmet need consideration.”

21. The note prepared by IPe in relation to the workshop on the 14 of April 2019 provides as follows in relation to the views expressed in respect of the duty to cooperate:

“3.3 The message regarding the importance of the DtC and the way it is dealt with at local plan examinations was repeated. All parties present appreciate how important the local duty is and how it has the potential to derail examinations. Each of the councils present outlined the position they are in at present regarding their development plans. From the discussion, it is clear that none of the authorities present are in a position to help meet any unmet housing need generated by SDC. In fact, most of the authorities believe that they are unlikely to be able to meet their own needs. The discussion thus confirmed and reinforced the contention made in the Submission version of the SLP that the Council is unable to meet its own needs and cannot rely on the DtC to resolve the problem. The importance of preparing a clear and convincing narrative for the forthcoming SDC local plan examination was again stressed.

3.4 The importance of continuing to seek to meet development needs in West Kent through cooperative strategic working was discussed. In this regard, the need for a strategic approach to infrastructure was emphasised. KH explained the importance of

getting member involvement and buy-in to any strategic work and that the more formal the process, the more likely it was to convince a local plan examiner that the councils are doing all they can to use the DtC effectively. Cllr Piper expressed severe reservations about the likelihood of effective strategic planning because of what he described as an inconsistency between the political message provided by the government regarding the GB and the guidance in the NPPF. KH pointed out that under the DtC there is nothing to stop local authorities undertaking joint strategic planning of the sort that previously happened in the South East through SERPLAN (London and South East Regional Planning Conference). KH also explained that the policy in the NPPF makes it clear that where there are exceptional circumstances local authorities can revise GB boundaries, but that this must be done through their local plans and not through the development management process.”

22. On the 30 April 2019 the plan was submitted for examination. As set out above Statements of Common Ground with neighbouring authorities were produced as part of the examination process. The examination hearing sessions commenced on the 24 September 2019, and issues in relation to the duty to cooperate were canvassed on the first day of the hearing. On the 14 October 2019 correspondence was received by the claimant from the Inspector raising concerns that she had in relation to whether or not the claimant’s approach to the SDLP had met the requirements of the duty to cooperate. There then followed further correspondence between the claimant and the Inspector which it is unnecessary to rehearse in detail for the purposes of this judgment. Suffice to say, that during the course of that exchange of correspondence the claimant provided detailed responses and further documentation including, for instance, the corrected note of the 10 April 2018. By the 13 December 2019 the Inspector had confirmed her view that the claimant had not discharged the duty to cooperate and therefore indicated that unless the claimant intended to withdraw the plan from examination the only course available was for her to produce a report concluding that the plan was not legally compliant. On the 3 January 2020 the claimant requested that the Inspector issue her report as soon as possible. This led to the production of the Inspector’s final report issued to the claimant on the 2 March 2020 and comprising the decision which is the subject of this challenge.
23. The Inspector’s final conclusions in relation to the issues with respect to the duty to cooperate are set out in the decision which is under challenge. In order to provide the full context for the Inspector’s decision it is necessary to set out her conclusions at some length. At the outset of her decision the Inspector set out that the starting point for the examination was the assumption that the local authority had submitted what it considered to be a legally compliant and sound plan. She confirmed that this was the basis for her examination. She further set out by way of introduction that having reached conclusions in relation to the duty to cooperate she did not go on to consider whether the plan was sound or was compliant with other legal requirements. She points out that if the local planning authority cannot demonstrate that the duty to cooperate has been complied with then, under section 20(7A) of the 2004 Act, the examiner is bound to recommend non-adoption of the local plan. In her decision the Inspector addresses the evidence in relation to the duty to cooperate in the following paragraphs:

“17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.

18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement and Appendices and in Appendix 1: Schedule A attached to its letter, dated 18 November 2019, with the minutes of most of these meetings provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group and the West Kent Statement of Common Ground (SoCG) Pilot Programme group.

19. The minutes of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues and Options (Regulation 18), do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPE), held on 22 January 2018, set out in the Facilitator’s Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

20. The notes of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks ‘is testing options to assess the way forward’. The summary of the meeting, held on 14 March 2018, set out in the Facilitator’s Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

The Facilitator's Note does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.

21. The Council has since stated, in Appendix 1: Schedule A to its letter, dated 18 November 2019, that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect, as it referred to Sevenoaks District Council planning to meet its OAN in full. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that 'the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue'. Paragraph 6.6 concludes that, 'each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need. Thus, the Councils are not yet in a position to reach agreement on the matter of housing supply'. As such, it is apparent that, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.

23. The minutes of the West Kent DtC meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the DtC meetings refer to addressing the unmet need in Sevenoaks is at the DtC meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted that 'officers discussed the potential requirement for a follow up letter to

request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.

24. Although the DtC statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.

25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>1</sup> within the HMA.

26. In paragraph 13.2 of its HPS, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers 'did not receive any formal requests to address unmet housing need' from Sevenoaks District Council.

27. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need

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following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.

28. In paragraph 1.04 of its HPS, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.

29. I appreciate that these neighbouring authorities say that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.”

24. The Inspector went on to address the statements of common ground which had been prepared in order to deal with cross-boundary issues. Her conclusion in relation to those statements of common ground is set out as follows:

“32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email to MHCLG, dated 15 March 2019, the Council says that it ‘is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.’ However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They imply that these matters will be dealt with in any review of the Plan. However, the Duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination.

33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.

34. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents engagement in relation to a solution in the future, not the submitted Plan. At the DtC Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders' meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan.”

25. The Inspector then proceeded to consider the question of the timing of the engagement in relation to, in particular, the extent of unmet housing need which was the strategic issue at the heart of her concerns in relation to the duty to cooperate. She sets out her conclusions in relation to this issue in the following paragraphs:

“35. The Council refers to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. The Council says, in its letter dated 18 November 2019, that it ‘could have gone back to neighbours at this point’, but decided not to, as it was felt that, as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated, ‘it was therefore extremely unlikely that a higher unmet need would be met elsewhere’. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.

36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that ‘all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other’ at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that ‘at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The

best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.’ However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.

37, The full extent of unmet need only became apparent to the Council following the consideration to the responses of the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs. This would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage. However, there is no evidence to show that this occurred. Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have been able to accommodate some of Sevenoaks’ unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.

39. It is noted that neighbouring authorities have not indicated any willingness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks’ housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been

significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need.”

26. The Inspector then proceeded to consider the peer review processes which had been undertaken by the claimant, in terms of external advice from IPE in November 2018, the PINS advisory visit in February 2019, the advice which had been received from the defendant and the review of the plan and the PAS workshop which had occurred on the 24 April 2019. Dwelling initially on the PAS workshop, and subsequently focusing on the other elements of peer review, the Inspector's conclusions are set out as follows:

“42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan, prepared by IPE, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement. This note concludes that ‘none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working’.

43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, the PAS Workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.

44. The Council says that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, significant concerns were raised in relation to the DtC at the Advisory Visit carried out by the Planning Inspectorate in February 2019, as set out in the note of this meeting.

44. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet

need and that it could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

45. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS Workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the DtC Statement was not submitted until May 2019. Nor would it have had the benefit of the time available to an Inspector for the examination of that detailed and complex evidence or the discussion at the Hearing sessions.

46. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement in which it states that 'KH advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPE, does not state that the DtC has been met or that KH advised that this was the case.

47. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective."

27. The final point addressed by the Inspector was whether it would be possible to proceed with the examination, applying the defendant's indication in correspondence with PINS that Inspectors should be pragmatic in getting plans into place. Her conclusions in relation to this point, and indeed the position overall, are set out in the following paragraphs of her decision.

"49. The Secretary of State wrote to the Planning Inspectorate, on 18 June 2019, in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority.

50. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also

stresses the importance of Inspectors working in a pragmatic way with Councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.

51. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.

53. For the reasons set out above the DtC set out in Section 33A has not been complied with.”

28. In the light of these conclusions the Inspector reached the overall decision that the duty to cooperate had not been complied with and therefore she was bound to recommend that the plan not be adopted.

The law

29. The SDLP, as a development plan document, has to be prepared in accordance with the provisions contained within Part 2 of the Planning and Compulsory Purchase Act 2004. Section 19 of the 2004 Act sets out certain requirements in relation to the contents of a development plan document. The relevant provisions of section 20 of the 2004 Act in relation to independent examination are as follows:

“20. Independent examination

(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.

(2) But the authority must not submit such a document unless-

(a) they have complied with any relevant requirements contained in the regulations under this Part, and

(b) they think the document is ready for independent examination.

...

(4) The examination must be carried out by a person appointed by the Secretary of State.

(5) The purpose of an independent examination is to determine in respect of the development plan document-

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound and

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.

...

(7) Where the person appointed to carry out the examination-

(a) has carried it out, and

(b) considers that, in all circumstances, it would be reasonable to conclude-

(i) that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, and

(ii) that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation, the person must recommend that the document is adopted and given reasons for the recommendation.

(7A) Where the person appointed to carry out the examination –

(a) has carried it out, and

(b) is not required by subsection (7) to recommend that the document is adopted, the person must recommend non-adoption of the document and give reasons for the recommendation.

(7B) Subsection (7C) applies where the person appointed to carry out the examination-

(a) does not consider that, in all circumstances, it would be reasonable to conclude that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, but

(b) does consider that, in all circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation.

(7C) If asked to do so by the local planning authority, the person appointed to carry out the examination must recommend modifications of the document that would make it one that-

(a) satisfies the requirements mentioned in subsection (5)(a), and

(b) is sound.”

30. As can be seen from the provisions of section 20, of particular note for present purposes is the provision contained in section 20(5) that the purpose of the independent examination includes an examination of whether the plan is sound, and also whether the local planning authority has submitted a document that has been prepared in compliance with the duty under section 33A of the 2004 Act in relation to its preparation. By virtue of the provisions contained within section 20(7), (7B) and (7C), where the Inspector determines that it would not be reasonable to conclude that the local planning authority had complied with the section 33A duty then the Inspector can neither recommend modifications nor adoption of the document. This is in effect what happened in the present case.

31. It is not disputed that the duty under section 33A of the 2004 Act applied to the preparation of the local plan by virtue of section 33A(3) of the 2004 Act. The nature and content of the duty is described in the following provisions of section 33A:

“33A Duty to co-operate in relation to planning of sustainable development

(1) Each person who is—

(a) a local planning authority,

(b) a county council in England that is not a local planning authority, or

(c) a body, or other person, that is prescribed or of a prescribed description, must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising

the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

(3) The activities within this subsection are—

(a) the preparation of development plan documents,

(b) the preparation of other local development documents,

(c) the preparation of marine plans under the Marine and Coastal Access Act 2009 for the English inshore region, the English offshore region or any part of either of those regions,

(d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs

(a) to (c) that are, or could be, contemplated, and

(e) activities that support activities within any of paragraphs (a) to (c), so far as relating to a strategic matter.

(4) For the purposes of subsection (3), each of the following is a “strategic matter”—

(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and

(b) sustainable development or use of land in a two-tier area if the development or use—

(i) is a county matter, or

(ii) has or would have a significant impact on a county matter.”

32. It will be noted from section 33A(7) that a person who is seeking to comply with the duty to cooperate must have regard to guidance issued by the defendant on how that duty is to be complied with. Material in that regard is contained both within the National Planning Policy Framework (“the Framework”) and in the Planning Practice Guidance

(“the PPG”). The relevant provisions of the Framework dealing with the duty to cooperate are set out in paragraphs 24-27 of the Framework as follows:

“Maintaining effective cooperation

24. Local planning authorities and county councils (in two-tier areas) are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries.

25. Strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans. They should also engage with their local communities and relevant bodies including Local Enterprise Partnerships, Local Nature Partnerships, the Marine Management Organisation, county councils, infrastructure providers, elected Mayors and combined authorities (in cases where Mayors or combined authorities do not have plan-making powers).

26. Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

27. In order to demonstrate effective and on-going joint working, strategic policy making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.”

33. Whilst addressing the provisions of the Framework it is worthwhile at this stage to note that the claimant’s argument includes the contention that the Inspector confused the requirements of the duty to cooperate with the examination of soundness required pursuant to the provisions of section 20(5). The policy in relation to whether or not a plan is sound is to be found in paragraph 35 of the framework in the following terms:

“35. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs and is informed by agreements with other authorities, so that

unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework.”

34. Turning to the PPG, it contains a considerable amount of guidance relating to the preparation of statements of common ground including their contents, subject matter and format. Of particular relevance to the issues in the present case are the provisions of the PPG dealing with the question of whether or not local planning authorities are required to reach agreement on strategic matters, and what should be done if they are unable to secure such agreements. The parts of the PPG dealing with this point are as follows:

“Are strategic policy-making authorities required to reach agreement on strategic matters, and what should an authority do if they are unable to secure these agreements?”

Strategic policy-making authorities should explore all available options for addressing strategic matters within their own planning area, unless they can demonstrate to do so would contradict policies set out in the National Planning Policy Framework. If there they are unable to do so they should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their plans for examination. Authorities are not obliged to accept needs from other areas where it can be demonstrated it would have an adverse impact when assessed against policies in the National Planning Policy Framework.

Inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or are not relying on the inspector to direct them. Where a strategic policy-making authority claims it has reasonably done all that it can to deal with matters but has been unable to secure the cooperation necessary, for example if another authority will not cooperate, or agreements cannot be reached, this should not prevent the authority from submitting a plan for examination. However, the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any

outcomes achieved; this will be thoroughly tested at the plan examination.”

35. In *Zurich Assurance Limited v Winchester City Council* [2014] EWHC 758 Sales J (as he then was) explained both the substance of the obligation imposed by section 33A and the role of the court in a challenge of the kind presently under consideration in the following terms:

“109. The duty to co-operate imposed by section 33A applies (so far as relevant in this case) in respect of the preparation of development plan documents “so far as relating to a strategic matter” (subsection (3)), as defined in subsection (4) (“sustainable development or use of land that has or would have a significant impact on at least two planning areas, [etc]”). The question of whether development or use of land would have a significant impact on two planning areas is a matter of planning judgment.

110. The obligation (see subsection (1)) is to co-operate in “maximising the effectiveness” with which plan documents can be prepared, including an obligation “to engage constructively [etc]” (subsection (2)). Deciding what ought to be done to maximise effectiveness and what measures of constructive engagement should be taken requires evaluative judgments to be made by the person subject to the duty regarding planning issues and use of limited resources available to them. The nature of the decisions to be taken indicates that a substantial margin of appreciation or discretion should be allowed by a court when reviewing those decisions.

111. The engagement required under subsection (2) includes, in particular, “considering” adoption of joint planning approaches (subsection (6)). Again, the nature of the issue and the statutory language indicate that this is a matter for the judgment of the relevant planning authority, with a substantial margin of appreciation or discretion for the authority.

112. WCC was required to have regard to the guidance about co-operative working given in the NPPF: subsection (7).

113. The limited nature of the role for the court in a case like the present is reinforced by the structure of the legislation in relation to review of compliance with the duty to co-operate under section 33A. The Inspector is charged with responsibility for making a judgment whether there has been compliance with the duty: section 20(5)(c) of the 2004 Act. His task is to consider whether “it would be reasonable to conclude” that there has been compliance with the duty: section 20(7)(b)(ii) and (7B)(b). A court dealing with a challenge under section 113 of the Act to the judgment of an inspector that there has been such compliance is therefore limited to review of whether the inspector could

rationally make the assessment that it would be reasonable to conclude that there had been compliance by a planning authority with this duty. It would undermine the review procedures in the Act, and the important function of an inspector on an independent examination, if on a challenge to a plan brought under section 113 the court sought to circumvent this structure by applying any more intrusive form of review in its own assessment of the underlying lawfulness of the conduct of the planning authority itself. A rationality standard is to be applied in relation to the decision made by the Inspector and in relation to the underlying decision made by WCC.”

36. In the subsequent case of *Trustees of the Barker Mill Estates v Test Valley Borough Council* [2017] PTSR 408 Holgate J endorsed and adopted the analysis of Sales J in *Zurich Assurance* (see paragraphs 55-57). Since the claimant places some reliance upon the conclusions of Holgate J in relation to the particular facts of that case it is necessary to set out Holgate J’s agreement in summary with Sales J, and then his analysis of the issues which arose in that case and how he resolved them. These points are dealt with in the following paragraphs of his judgment:

“58. In agreement with Sales J I consider that:—

(i) The question posed by section 20(7B)(b) of PCPA 2004 is a matter for the judgment of the Inspector;

(ii) The Court's role is limited to reviewing whether the Inspector could rationally make the assessment that

(ii) The Court's role is limited to reviewing whether the Inspector could rationally make the assessment that it would be “reasonable to conclude” that the LPA had complied with section 33A ;

(iii) It would undermine the structure of PCPA 2004 and the procedure it provides for review by an independent Inspector if, on a challenge made under section 113 , the Court sought to apply a more intrusive form of review in its assessment of the underlying lawfulness of the LPA's conduct or performance; form of review in its assessment of the underlying lawfulness of the LPA's conduct or performance;

59. The challenge under ground 2 is therefore directed to the Inspector's report, in particular paragraphs 10 to 14 where he stated:—

“10. On the first day of the Hearing a submission was made by a representor to the effect that the Council had failed in relation to the DtC [the duty to co-operate]. This was discussed in some detail at the Hearing, and in public correspondence between the representor, the Council and myself. The most important element of this submission was that the Council's identified affordable

housing need figure is 292 dwellings per annum (d.p.a.) (clarified by MM/5/1 ), with certain caveats, whereas the expected provision is 206 d.p.a. The Council put forward reasons for this position, but the DtC issue relates to the fact that the Council had not asked neighbouring authorities whether they could accommodate some or all of the identified shortfall.

11. There is nothing to suggest the extent to which any shortfall in affordable housing provision within Test Valley would lead to displaced demand affecting some or all of the eight adjoining authorities.

12. The objective of the DtC is to maximise the effectiveness of the plan making process. In this case the overall manner in which the Council has worked with other authorities, particularly but not exclusively in the southern part of the Borough, is impressive. In the light of their considerable experience, Council officers presented me with a very clear picture of the position of adjoining authorities in relation to affordable housing. To have made a formal request to adjoining authorities for assistance with affordable housing, when the Council knew full well what the answer would be, would not have been effective or productive.

13. In subsequent correspondence the representor also stated that there would be a shortfall in market housing, and that the DtC would additionally be triggered in this respect. However, as I conclude (below) that the RLP will meet the full OAN for market housing, this matter does not trigger the DtC.

14. The Council has clearly taken into account the wider strategic context and the interrelationships with neighbouring areas, particularly in terms of housing markets and employment patterns. I am satisfied that the Council has engaged constructively, actively and on an ongoing basis with relevant local authorities and organisations, and I conclude that the DtC has been met.

...

60. The Claimants submit that where an LPA cannot meet its own FOAN for affordable housing then it must “explore under the ambit of the duty to co-operate whether any unmet needs can be met within adjacent LPAs” (paragraph 68 of skeleton). The proposition is said to be based upon paragraphs 104 and 106 of the judgment of Hickinbottom J in *Gallagher* . But in fact the Judge did not determine any issue in relation to section 33A nor did he lay down the proposition for which the Claimants contend.

61. It is to be noted that the Claimants' proposition is limited in scope. This is not a case where non-compliance with section 33A is said to have occurred because the Defendant failed to address

the inclusion of a policy in its plan for meeting needs arising outside its area. The Claimants simply argue that TVBC should have “explored” with other LPAs the issue of whether the shortfall in meeting the FOAN for affordable housing in its area could be dealt with in their areas. In essence, this is the same complaint as that raised at the Examination, namely that TVBC failed to put this question to the other authorities.

62. The Claimants were not at all precise as to what the use of the term “explore” should be taken to mean, although it lies at the heart of the ground of complaint. By implication the Claimants recognise that TVBC was not in a position to complete other authorities to provide for TVBC's shortfall and that they might legitimately say that they were unable to assist. Here the word “explore” suggests obtaining sufficient information about affordable housing needs in the areas of other LPAs and their ability to satisfy their own needs and any additional needs from other areas. In the light of that information a plan-making authority could decide, as a matter of judgment, whether it would be worthwhile to pursue negotiations with one or more other authorities to assist with its shortfall.

63. In this case the Claimants made no attempt to show the Court that TVBC either lacked this information or that, in the light of the information it had, TVBC's judgment that there was no point in pursuing negotiations with other authorities on this point was irrational. In his reply, Mr Cahill QC confirmed that the only criticism of the Inspector's report is one of irrationality and is limited to the last sentence of paragraph 12, in which he had said that there had been no need for TVBC to make a “ formal request” to adjoining authorities when it knew full well what the answer would be. He also stated that no legal criticism is made of the penultimate sentence of paragraph 12 in which the Inspector said that TVBC's officers had given him a very clear picture of the position of adjoining authorities in relation to affordable housing.

64. In fact, paragraph 12 is a summary of what the Inspector had been told during the Examination. In inquiry document IN009 (dated 19 December 2014) the Inspector explained that the extent of cross-boundary working had been explained by TVBC not only in its “Duty to Co-operate Statement” but also in the Hearing sessions, including one devoted to affordable housing. TVBC had been actively engaged in the production of a number of informal strategies and evidence based studies with other authorities and stakeholders. The extent of the working with other authorities was described by the Inspector as “impressive”. It was from this information that he reached the judgment that TVBC's officers were “fully aware that other authorities would not be in a position to assist with any shortfall”. Plainly the

Inspector relied upon this information when writing paragraph 12 of his Report on the Examination.

65. When paragraph 12 of the Report is read properly in the context of the material which was before the Examination, the Inspector, in his review of TVBC's performance, was entitled to reach the conclusions that (i) they had obtained sufficient information from the cross-boundary work which had in fact taken place on whether adjoining authorities would be able to provide affordable housing to meet any part of needs arising within TVBC's area and that (ii) it would have been pointless to make a "formal request" for assistance in meeting TVBC's shortfall. It is impossible for the Court to treat to Inspector's conclusions as irrational and so ground 2 must be rejected."

37. In *R(on the application of St Albans City and District Council) v SSCLG and others* [2017] EWHC 1751 Sir Ross Cranston dealt with an application for judicial review in which it was contended that an Inspector's conclusion that the duty to cooperate had not been satisfied was unlawful. The factual circumstances of that case involved the claimant's argument that the Inspector had failed to properly take into account the polarised position or impasse which had emerged in relation to contentions between the claimant and the adjoining local planning authorities with respect to the housing market. Having accepted and endorsed the approach taken in *Zurich Assurance* and *Trustees of Barker Mills*, Sir Ross Cranston concluded that the reasons provided by the Inspector demonstrated that he was fully aware of the disagreement between the council and adjoining local planning authorities in relation to the definition of the housing market area and appreciated the issue. The judge was satisfied that the decision adequately reasoned the conclusions that the Inspector had reached. In paragraph 51 of the judgment Sir Ross Cranston went on to accept the defendant's submission "that once there is disagreement, I would add even fundamental disagreement, that is not an end of the duty to cooperate". He concluded that the duty to cooperate remained active and ongoing "even when discussions seemed to have hit the buffers". Whilst in reaching this conclusion he placed some reliance on a decision of Patterson J in *R(on the application of Central Bedfordshire Council) v SSCLG* [2015] EWHC 2167 (Admin), which the parties in the present case accepted could not be authoritative as it was a permission decision which did not contain a statement that it could be cited in accordance with the Practice Direction on the Citation of Authorities, 9 April 2001 and, furthermore, was overturned by the Court of Appeal in granting permission to appeal.. Nonetheless the observations of Sir Ross Cranston are in my judgment properly capable of being considered as free standing, relevant and reliable, bearing in mind the fact-sensitive nature of the judgment which has to be reached in each individual case in which the duty to cooperate is being examined, and taken in the context of the particular facts of the case he was considering.

#### Submissions and conclusions

38. On behalf of the claimant Ms Saira Kabir Sheikh QC advances the case on four grounds. The first ground is that the Inspector failed when reaching her conclusions to apply the margin of appreciation which ought to be afforded to the claimant pursuant to section 33A of the 2004 Act. It is Ms Sheikh's submission, based upon both the wording of the statute and also the decisions in *Zurich Insurance* and *Barker Mills*, that when

considering whether or not the claimant had discharged the duty to cooperate in preparing the plan the Inspector was required to afford a margin of appreciation to the claimant and she failed to do so. In particular Ms Sheikh relies upon the contention that the Inspector sought to substitute her own judgment for that of the claimant and adjoining authorities where, for instance, in paragraph 29 of her report she concludes that, notwithstanding the fact that the adjoining authorities indicated that there had been regular constructive and cooperative liaison, she was not satisfied that that had in fact taken place. The discarding of the opinions of adjoining authorities demonstrated that the Inspector had failed to afford the claimant the margin of appreciation to which it was entitled.

39. Moreover, Ms Sheikh disputes the contention that the Inspector applied the correct test in reaching her conclusions: whilst the Inspector made assertions about unmet housing need being met elsewhere outside the claimant's administrative area, in reality the claimant was fully aware from its engagement with neighbouring authorities that there was no possibility of unmet housing need being met elsewhere. The Inspector's approach, for instance in paragraph 37 of her report, demonstrates that the Inspector's focus was upon what a local planning authority might do in the event of unmet housing need arising and was not focused on the particular circumstances of the claimant and its own knowledge and judgment as to what might be expected from any dialogue with adjoining authorities. Effectively, the whole tenor of the Inspector's report reflects the substitution of her own judgment for that of the claimant, without affording the claimant the margin of appreciation to which they were entitled.
40. Ms Sheikh also contends that her approach to the statements of common ground illustrated a similar error. The statements of common ground illustrated the depth and extent of the claimant's engagement with adjoining authorities, and her assertion that these had been drafted too late to influence the plan misunderstood both her role and the proper approach to be taken to the duty to cooperate.
41. In response to these submissions Mr Richard Moules, on behalf of the defendant, submits that when the Inspector's report is read as a whole it is clear that she has applied the correct approach. She started from the proposition that the plan had been submitted by the claimant in what it considered to be a legally compliant and sound form. In paragraph 37 of her report she clearly applied the test of what it was "reasonable to expect" the claimant to have done in the circumstances which arose. Fundamentally, Mr Moules submits that the present case had little to do with the margin of appreciation, on the basis that the Inspector's judgment as to what the claimant had done demonstrated that in fact they had done nothing constructive to explore addressing unmet housing need at the appropriate time during the plan's preparation. The Inspector concluded that the claimant could reasonably have been expected to do something in the circumstances which arose when the extent of unmet need emerged, but in fact did nothing.
42. Moreover, Mr Moules maintains that the Inspector was entitled to scrutinise the assertions of the adjoining authorities and if she concluded that, having evaluated all of the available evidence, it was not "reasonable to conclude" that the duty to cooperate had been satisfied then she was entitled to reach the conclusion which she did. Further, in applying the statutory tests at paragraph 26 of the Framework, the Inspector needed to examine whether the claimant had taken reasonable steps to explore meeting its unmet housing need. In doing so the Inspector was not effectively adopting the

approach of asking what a hypothetical authority would have done but was rather discharging the statutory tests on the facts of this particular case. The undoubted existence of the margin of appreciation should not stand in the way or act as a disincentive to local planning authorities working together to help to solve difficult and controversial problems of, for instance, unmet housing needs where the authority areas are the subject of environmental constraints.

43. Turning to Ground 2, Ms Sheikh contends that in reaching her conclusions the Inspector failed to correctly interpret and apply the duty to cooperate and conflated it with the statutory requirement that the plan should be sound. Central to her submission is that the Inspector misdirected herself by working backwards from evidence which might go to the soundness of the plan to reach conclusions on whether or not the duty to cooperate had been discharged. She worked backwards from the existence of unmet need to reach a conclusion that there had been a failure to comply with the duty to cooperate. This confused and conflated the two issues of the duty to cooperate and soundness. The evidence of this error exists, for instance, in paragraphs 17 and 24 of the Inspector's report in which she focusses on the existence of unmet need and the failure to resolve that issue. Ms Sheikh submits that the reality was that at the stage that unmet need was clearly identified it was well known that it could not realistically be met elsewhere. In effect, the Inspector erroneously considered the duty to cooperate in the light of the unmet housing need, rather than examining the requirements of the duty to cooperate itself in order to understand whether it had been discharged. The issue of unmet need and whether the housing figures and delivery proposed by the SDLP were justified was an issue connected with soundness and not the duty to cooperate.
44. In response to these submissions Mr Moules contends, firstly, that the Inspector was careful to distinguish between the duty to cooperate and the requirements of soundness in the substance of her report. Secondly, Mr Moules submits that when the Inspector's decision is properly understood, it correctly distinguished between the duty to cooperate and soundness. The problem, as identified by the Inspector, did not lie in the existence of unmet housing need in and of itself but rather in the claimant's failure to engage with adjoining authorities constructively, actively and on an ongoing basis in order to consider an attempt to find a solution that that unmet housing need at the time when it emerged. The Inspector recognised, in particular in paragraph 39 of her report, that it may not be possible for the claimant's housing need to be met in full, but concluded that earlier and fuller proactive engagement might have made it "significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need". In truth, Mr Moules contends that the claimant highlights two paragraphs (paragraphs 17 and 24) which in fact exemplify the Inspector addressing and setting out the essence of the claimant's failure to engage in ongoing active and constructive engagement with the neighbouring authorities in relation to the strategic issue of unmet housing need, rather than confusing the questions arising under the duty to cooperate with those which arose in respect of soundness.
45. Turning to Ground 3, Ms Sheikh on behalf of the claimant submits that the Inspector failed to have regard to the available material evidence furnished by the claimant. The evidence demonstrated that the claimant was both aware that there would be an unmet need, but also as a result of its duty to cooperate discussions with adjoining authorities was aware that regardless of the scope of the unmet need neighbouring authorities would not be able to assist. This point is not grappled with, she submits, by the

Inspector, and, in particular, the Inspector fails to grapple with the extensive environmental constraints that each of the authorities have to work with. In addition, Ms Sheikh submits that the statements of common ground ought not to have been disregarded in the way the Inspector did by treating them as too late to influence the SDLP. In fact, that documentation reflected years of discussions between the authorities and was highly relevant to demonstrate that the duty to cooperate had been discharged. Further, the lack of a formal request for assistance from the claimant did not demonstrate non-compliance with the duty to cooperate: the reason that no formal request was made was because as a result of the exercise of the duty to cooperate the claimant was well aware that unmet need could not be met elsewhere.

46. In response to these submissions Mr Moules submits that, firstly, the Inspector addressed whether or not there had been discussion of meeting unmet need for a considerable time and concluded on the evidence, as she was entitled to, that there was no evidence to support the claimant's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities (see paragraph 35). Secondly, Mr Moules submits that the Inspector was clearly aware of the constraints under which both the claimant and the adjoining authorities operated: these were referred to at several points during the course of her report. Thirdly, the Inspector explained clearly her conclusion that the claimant had neither demonstrated that it had constructively and actively pursued solutions to the unmet housing need it had identified with its neighbours at the appropriate time during preparation of the plan, nor that cooperation with its neighbours was an impossibility in respect of meeting any of the unmet housing need arising. Fourthly, Mr Moules submits that, again, the Inspector clearly explained for good reason that the statements of common ground had arrived too late in the process to support the conclusion that the duty to cooperate had been complied with. Fifthly, the claimant's complaint in relation to the Inspector's view on the lack of the formal request to neighbouring authorities is submitted by Mr Moules to be simply another disagreement on behalf of the claimant with the Inspector's planning judgment that it was unreasonable for the claimant to do nothing by way of meaningful exploration of solutions to meet the identified housing need shortfall.
47. Finally, by way of Ground 4, Ms Sheikh submits that the Inspector failed to give adequate reasons for the claimant's failure to comply with the duty to cooperate or, alternatively, the Inspector's conclusion was irrational. In particular it is submitted that the Inspector failed to provide adequate reasons as to why weight was placed upon the claimant's failure to make a formal request for assistance earlier and further failed to adequately reason why she disregarded the evidence of neighbouring authorities in relation to the duty to cooperate, or why she suggested that the statements of common ground did not provide evidence of compliance to cooperate. In the light of the evidence the Inspector's conclusions were irrational.
48. In response to these submissions Mr Moules submits that the Inspector's conclusions on each of the issues relied upon were clear and entirely rational. As the Inspector explained, had formal requests for the adjoining authorities been made as soon as the full extent of the claimant's unmet housing need became apparent then it may have been possible through constructive engagement to achieve a more positive outcome and maximise the effectiveness of the plan (see paragraphs 37-39 of the Inspector's report). The Inspector's reasoning showed that the neighbouring authorities' views were taken

into account, but as the Inspector explains they could not allay the concerns that she had clearly identified. The statements of common ground were, for the reasons the Inspector gave, provided too late to furnish evidence of compliance with the duty to cooperate in relation to the unmet housing need identified. Finally, Mr Moules submits that it is unarguable that the Inspector's conclusion was irrational.

49. In forming conclusions in relation to these competing submissions it is necessary, in my view, firstly to analyse the substance of the legal issues which arise in relation to the duty to cooperate under section 33A of the 2004 Act. Thereafter, secondly, it is important in my view to be clear as to the nature of the decision which the Inspector reached and the specific basis for her conclusions.
50. As described in paragraph 33A(2)(a) the duty to cooperate, when it arises, requires the person who is under the duty "to engage constructively, actively and on an ongoing basis" in relation to the preparation of a development plan document (see paragraph 33(A)(3)(a)) "so far as relating to a strategic matter" (see paragraph 33A(3)(e)) to "maximise the effectiveness" of the activity of plan preparation. Whilst during the course of her submissions Ms Sheikh points out that activities were undertaken by the claimant in relation to a broad range of strategic issues concerned with infrastructure and wider environmental designations, and she relied upon the numerous strategic matters with which the claimants were concerned in preparing the SDLP, it is in my view clear that the duty to cooperate arises in relation to each and every strategic matter individually. There was, therefore, no error involved by the Inspector in the present case focussing upon one of those strategic matters in reaching her conclusions in respect of the duty to cooperate.
51. I accept the submission made by Ms Sheikh that discharging the duty to cooperate is not contingent upon securing a particular substantive outcome from the cooperation. That was a proposition which was not disputed by Mr Moules. I accept, however, his submission that the duty to cooperate is not simply a duty to have a dialogue or discussion. In order to be satisfied it requires the statutory qualities set out in section 33A(2)(a) to be demonstrated by the activities comprising the cooperation. As Sales J observed in paragraph 110 of *Zurich Assurance*, deciding what ought to be done to meet the qualities required by section 33a(1)(c)(2)(a) "requires evaluative judgments to be made by the person subject to the duty regarding the planning issues and use of limited resources available to them." As Sales J also observed, bearing in mind the nature of the decisions being taken a court reviewing the decision of an Inspector making a judgment in respect of whether there has been compliance with the duty will be limited to examining whether or not the Inspector reached a rational decision, and will afford the decision of the Inspector a substantial margin of appreciation or discretion. It is against the background of these principles that the submissions of the claimant fall to be evaluated.
52. The second issue is, as set out above, to be clear as to the nature of the decision which the Inspector reached. In that connection, in my judgment the submissions made by Mr Moules in relation to Ground 4 are plainly to be preferred. Having carefully examined the Inspector's conclusions they were, in my judgment, clearly expressed and set out in detail the reasons for the conclusions that she reached. I am unable to identify any defect in the reasoning of her report which sets out clearly and in full detail her conclusions and the reasons for them.

53. It is clear from the report that the conclusions of the Inspector were that the claimant became aware of the detailed extent of its unmet housing need after the Regulation 18 consultation which ceased on the 10 September 2018 (see paragraph 27 and paragraph 35). The first minutes of a duty to cooperate meeting referring to addressing unmet housing need in the claimant's area was on 13 March 2019, after the Regulation 19 consultation on the SDLP, and seven weeks prior to submission of the SDLP for examination (see paragraph 23). The minutes of the duty to cooperate meetings provided "no substantial evidence that the council sought assistance from its neighbours in meeting its unmet housing need" prior to the publication of the Regulation 19 version of the SDLP (see paragraph 24). The claimant did not request assistance from Tunbridge and Malling Borough Council during the course of Regulation 19 consultation on the Tonbridge and Malling Local Plan between 1 October and 19 November 2018 to assist with unmet housing need in the claimant's area (see paragraph 27), and only made formal request to ask whether or not Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council would assist in meeting the claimant's unmet housing need after the Regulation 19 consultation had been completed and just prior to submitting the plan for examination (see paragraphs 27 and 28). The statements of common ground were completed after the submission of the plan for examination and prepared too late to influence the content of the plans preparation (see paragraphs 32 and 33). Whilst the claimant contended that discussions had already indicated prior to the extent of unmet housing need emerging following the Regulation 18 consultation and further engagement was not undertaken because it had already been indicated that an unmet need of 600 dwellings could not be accommodated, the Inspector concluded that there was no evidence to support the assertion that discussions had already indicated an unmet need of 600 dwellings could not be accommodated (see paragraph 35).
54. Thus, the Inspector concluded in paragraph 37 of her report that it was reasonable to expect that the claimant would, after the extent of the unmet housing need emerging following the Regulation 18 consultation, have undertaken constructive engagement in an attempt to resolve the issue prior to the publication of the Regulation 19 version of the plan. Whilst that process may or may not have been fruitful, the Inspector observed that "it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place". The peer review process did not assist: the PAS workshop was undertaken at a very late stage the plan process and "if the engagement had occurred as soon as the council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome" (see paragraph 43). The visiting Inspector raised issues which were not adequately resolved before the plan was submitted (see paragraph 44).
55. From this distillation of the Inspector's conclusions and reasoning it is clear to see that there is no substance in the claimant's grounds. In my view it perhaps makes most sense to start with the claimant's Ground 2, the contention that the Inspector failed to properly interpret and apply the duty to cooperate and conflated it with the requirement for soundness. In my view there is no basis for this contention when the Inspector's conclusions and reasons are properly understood. Firstly, as to the application of the test it is clear from paragraph 37 that the Inspector directed herself to whether, in accordance with the requirements of section 20(7)(a)(ii), it was reasonable for her to conclude that the duty to cooperate had been complied with. She found that once the

extent of the unmet need emerged after completion of the Regulation 18 consultation on the SDLP, the claimant should have contacted its neighbouring authorities and engaged constructively in an attempt to resolve the issues arising from its unmet housing needs. Her conclusion that there was no communication, let alone engagement, in between the emergence of this issue and embarking upon a Regulation 19 consultation underpinned her conclusion that there had not been constructive, active and ongoing engagement in relation to that issue. It is clear from paragraphs 37 and 43, and indeed from the totality of her reasoning, that what she was scrutinising and assessing was not the identification of a particular solution for the strategic issue of unmet housing need, but rather the quality of the manner in which it had been addressed. Her conclusions were, based on her factual findings as to what in fact happened after the Regulation 18 consultation disclosed the extent of the unmet housing need, that no constructive and active engagement was undertaken at the time when it was required in advance of the Regulation 19 version of the SDLP being settled. These conclusions properly reflected the statutory requirements and the evidence which was before the Inspector and do not disclose any misdirection on her part, or confusion between the requirements of the duty to cooperate and the requirements of the soundness with respect to this strategic issue.

56. Turning to Ground 1 there is force in the submission made by Mr Moules that, in truth, this is a clear-cut case based on the findings that the Inspector reached. As set out above, the Inspector concluded (as she was entitled to on the evidence before her) that at the time when the strategic issue in relation to unmet housing need crystallised, there was no constructive, active or ongoing engagement and, indeed, the matter was not raised with neighbouring authorities until after the Regulation 19 consultation on the SDLP and at a very late stage in plan preparation. Requests made of neighbouring authorities on the 11 April 2019 post-dated the Regulation 19 consultation and were shortly prior to the plan being submitted. In those circumstances the Inspector was entitled to conclude that these discussions were not taking place at a time when they could properly inform and influence plan preparation and maximise the effectiveness of that activity. As the Inspector recorded in paragraph 37, she found, as she was entitled to, that had engagement occurred after the Regulation 18 consultation and prior to the Regulation 19 consultation “it might have resulted in a more positive outcome”. Further, as the Inspector recorded, the possibility that it may have led to the same outcome was nothing to the point. Effective, constructive and active engagement had not taken place at the time when it was required. By the time there was communication in respect of the issue it was too late.
57. Although the claimant stressed its belief that whenever called upon to do so neighbouring authorities would have refused to provide assistance, I am not satisfied that this provides any basis for concluding that the Inspector’s conclusions were irrational. Indeed, as she notes, Tunbridge Wells Borough Council noted in its written material that if the request to address the claimant’s unmet housing need had been made at any point prior to the submission of its comments on the Regulation 19 version of the plan then their response would have addressed the issue more fully. There was, therefore, evidence before the Inspector to support her judgment in this respect. In the light of these matters I am unable to accept that there is any substance in the claimant’s Ground 1. There is no justification for the suggestion that the Inspector failed to afford a margin of appreciation to the claimant in reaching her conclusions; the clear-cut nature of the conclusions which the Inspector reached were fully set out and ultimately

the Inspector was required by section 20 of the 2004 Act to reach conclusions in relation to the statutory test which she did.

58. Turning to the submissions in relation to Ground 3, I am unable to accept that the Inspector failed to have regard to the material which was available to her in reaching her conclusions. It is clear to me from the detail of the report that the Inspector had regard to all of the evidence that had been placed before her. The Inspector clearly addressed the detailed material in relation to the duty to cooperate meetings and the preparation of joint evidence. She also engaged with the existence of statements of common ground and the views of the neighbouring local authorities. She gave careful consideration to the peer review which had been undertaken and reflected on the responses from adjoining authorities to request they meet unmet housing need from the claimant and the environmental constraints under which the claimant had to operate. In my view the submissions advanced in respect of Ground 3 effectively amount to a disagreement with the Inspector on the conclusions which she ought to have forged based upon the material which was before her. Ultimately, the availability of this evidence did not dissuade the Inspector from reaching the conclusions which she did in respect of quality and timing of the engagement in the present case: the generality of the position presented by the claimant does not gainsay the detailed conclusions reached by the Inspector as to the nature of the duty to cooperate activities, or lack of them, at the critical point of time when the extent of nature of the unmet housing need emerged at the conclusion of the Regulation 18 consultation. In my view it is clear that the Inspector had careful regard to all of the material which was placed before her and reached conclusions which, I have already set out in respect of my views on Grounds 1 and 2, were lawful and appropriate.
59. I have already expressed my view as to the quality and nature of the reasons provided by the Inspector in respect of the examination. In my view her reasons were clear, full, detailed and justified. In addition, under Ground 4 it is contended that the conclusion which she reached was irrational. In my judgment there is no substance whatever in that contention. For the reasons which I have already given the Inspector's conclusions were clearly open to her and based upon a proper appreciation and application of the relevant statutory tests.
60. It follows that for all of the reasons set out above I am satisfied that there is no substance in any of the grounds upon which this claim is advanced and the claimant's case must be dismissed.

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## Appeal Decision

Inquiry held on 9-12 December 2014

Site visit made on 12 December 2014

**by John Felgate BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 20 January 2015**

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**Appeal Ref: APP/A1720/A/14/2220031**

**Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Village Green PLC against the decision of Fareham Borough Council.
  - The application Ref P/13/1121/OA, dated 20 December 2013, was refused by notice dated 11 March 2014.
  - The development proposed is "*erection of 37 dwellings together with associated access and parking for existing play area*".
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### DECISION

1. The appeal is allowed and planning permission is granted for the erection of 37 dwellings together with associated access, and parking for the existing play area, on land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick, Hampshire, in accordance with the terms of the application, Ref P/13/1121/OA, dated 20 December 2013, subject to the conditions set out in the attached schedule.

### PRELIMINARY MATTERS

2. The planning application seeks outline permission with all matters reserved except for access, which is proposed to be from Swanwick Lane, adjacent to the existing play area. The application is accompanied by an 'Indicative Layout' (Plan No PP1220-101-00, Revision P2), but in relation to all matters other than access, that plan is purely illustrative.
3. The Council's decision notice listed four refusal reasons (RRs). RR2 related to affordable housing and ecological mitigation. Since then however, the appellants have entered into a legal undertaking which provides for ecological mitigation by way of a financial contribution. And with regard to the affordable housing, the Council now accepts that this could be secured by condition. RR2 was therefore not pursued at the inquiry.
4. RR3 related to noise. Subsequently, the appellants have submitted a noise survey report. In the light of this report, it is now agreed that any issues relating to this matter could also be deal with by condition.
5. RR4 contained a list of the submitted plans. The Council now accepts that since this did not in fact state any reasons for objection, it should not have

appeared as an RR. The only one of the original refusal reasons that remains at issue between the parties is therefore RR1.

6. As well as dealing with ecological mitigation, the legal undertaking provides for the implementation of a landscaping scheme and a woodland management plan, and the setting up of a management company with responsibility for the upkeep and maintenance of the landscape and woodland areas within the proposed development.

## **PLANNING POLICY BACKGROUND**

### **The development plan**

#### *The Fareham Borough Local Plan (the FBLP), adopted March 2000*

7. The FBLP was designed to accord with the former Hampshire Structure Plan Review. Its intended plan period was 1999-2006. In 2007, a large number of the FBLP's policies were saved by a direction from the Secretary of State. The majority of those have since been replaced by the 2011 Core Strategy, but some have continuing effect.
8. Saved Policy DG4, which applies throughout the District, states that development will be permitted, provided that various requirements are met. These include that proposals should not detract from the natural landform, and should respect inward and outward views.
9. On the proposals map, the appeal site is included in an area designated as countryside.

#### *The Fareham Core Strategy (FCS), adopted August 2011*

10. The FCS has a plan period of 2006-26. It was intended to conform with the regional strategy contained in the South-East Plan (the SEP), approved in May 2009. It was also prepared in the context of the then-emerging South Hampshire Strategy (the SHS), a non-statutory sub-regional plan by the Partnership for Urban South Hampshire (PUSH), a consortium of 11 local authorities<sup>1</sup>.
11. Policy CS6 sets out the development strategy, which is to focus new development in various specified locations. One of these is the Western Wards, which includes Lower Swanwick. Priority is to be given to the re-use of previously developed land within defined settlement boundaries<sup>2</sup>. Policy CS9 sets out further criteria for development in the Western Wards, which include protecting the setting of the existing settlements.
12. Outside defined settlement boundaries, Policy CS14 states that development will be strictly controlled, to protect the landscape character, appearance and function of the countryside and coastline. In coastal locations, the policy seeks to protect the special character of the coast, when viewed from land or water.
13. Policy CS17 seeks to encourage good design which responds positively to the key characteristics of the area, including its landscape.

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<sup>1</sup> The SHS later became informally adopted by the partnership authorities in October 2012

<sup>2</sup> The FCS does not include any new proposals map of its own. The plan is accompanied by an 'interactive proposals map', but this is stated not to form part of the adopted plan itself. In the absence of any other indication, it appears that references in the FCS to 'defined settlement boundaries' relate to the boundaries shown on the proposals map of the FBLP. This interpretation is not disputed in the present appeal.

## **Emerging plans**

*The draft Development Sites and Policies DPD (the DSP), submitted June 2014*

14. The DSP is intended to provide for the development requirements identified in the FCS up to 2026, and also the increased levels of housing and employment proposed over the same period in the SHS. The DSP covers the whole of the District except for the proposed new community of Welborne.
15. On the DSP's proposals map, the appeal site forms part of an 'area outside of defined settlement boundaries'. In such areas, draft Policy DSP7 proposes a presumption against new residential development.
16. At the time of writing this decision, the draft DSP has completed the hearing stage of its public examination, and is awaiting the Inspector's report. Until then, the plan remains subject to unresolved objections in respect of the policies and designations relevant to the present appeal. As such, it carries limited weight.

*The draft Welborne Plan (the WP), submitted June 2014)*

17. The draft WP is an area action plan which sets out policies and proposals for the development of the new settlement, over a period running to 2036. At present, the WP has reached the same stage as the DSP, and is awaiting the Inspector's report. In so far as the WP is relevant to the present appeal, it is subject to unresolved objections, and thus its weight is limited.

## **National policy and guidance**

*The National Planning Policy Framework (the NPPF)*

18. The NPPF states at paragraph 6 that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 9 states that sustainable development involves seeking positive improvements in the quality of the environment and in people's quality of life; amongst other things, this includes widening the choice of high quality homes. Paragraph 14 states that there is a presumption in favour of sustainable development.
19. Paragraph 17 sets out core planning principles. These include proactively driving and supporting sustainable economic development to deliver the homes and other development that the country needs. Every effort should be made objectively to identify and then meet those needs, and to respond positively to opportunities for growth. The core principles also include recognising the intrinsic character and beauty of the countryside, conserving and enhancing the natural environment, and focusing development in sustainable locations.
20. At paragraph 47, the NPPF seeks to boost the supply of housing significantly. Local plans should aim to meet the full, objectively assessed need for market and affordable housing, as far as is consistent with other NPPF policies. Paragraph 49 states that policies for the supply of housing should not be considered up to date if a 5-year supply of deliverable housing sites cannot be demonstrated.
21. Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes. Paragraph 114 seeks to maintain the character of the undeveloped coast and its distinctive landscapes.

22. Paragraphs 186 and 187 requires that all planning decisions should be approached positively, by looking for solutions rather than problems, and that applications for sustainable development should be approved where possible.

*Planning Practice Guidance (PPG)*

23. The PPG provides further guidance on the policies in the NPPF. Paragraph 8-001 makes it clear that the NPPF's aims for the natural environment are not limited only to areas that are formally designated. Sections 2a and 3 contain more detailed advice on assessing housing needs and land availability, to which I will refer further below.

**MAIN ISSUES**

24. In the light of the matters set out above, and all of the submissions before me, both oral and written, it seems to me that the main issues in the appeal are:
- Whether it can be demonstrated that the District has a 5-year supply of land for housing development, to satisfy the requirements of the NPPF;
  - And the proposed development's effects on the character and appearance of the area.

**REASONS FOR DECISION**

**Housing land supply**

25. The Council claims a housing land supply of over 13 years. The appellants contend that the true figure is only just over 3 years. The divergence results firstly from a fundamental difference as to the size of the requirement that is to be met, and also from various other smaller, but significant differences in both methodology and assumptions. I will deal with each of these differences below.
26. The Council's land supply calculations are based on meeting the requirements in FCS Policy CS2, plus a small uplift reflecting the additional requirements suggested in the 2012 SHS. The appellants accept that on this basis a 5-year supply can be demonstrated, but they contend that the FCS/SHS figures are the wrong basis for the calculation.
27. The appellants' own calculations are based on the housing need projections in the Strategic Housing Market Assessment (SHMA) report for South Hampshire, published in January 2014. The Council, whilst disputing the use of the SHMA figures over the FCS, maintains that a 5-year supply can be demonstrated on this basis too.

*The Council's preferred housing requirement - based on FCS Policy CS2*

28. The PPG advises that the starting point for assessing the 5-year land supply should be the housing requirement figure in an up-to-date adopted local plan, and that considerable weight should be given to such a figure (paragraph 3-030). In the case of Fareham, the FCS is an adopted plan, and is only a little over 3 years old since its adoption. In such circumstances, it might often be unnecessary to look any further.
29. However, the PPG goes on to make it clear that this is not always the case:

*"(Considerable weight should be given to the housing requirement figures in adopted local plans) ...unless significant new evidence comes to light. It should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs.*

*Where evidence in local plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered."*<sup>3</sup>

30. In the present case, the FCS's housing requirement was directly derived from the now-revoked SEP. That plan was itself based upon an earlier version of the SHS, approved by the member authorities as long ago as 2005, which in turn was based on evidence necessarily dating back to before that time. Having regard to the PPG advice therefore, it seems to me that the FCS appears to be an example of the kind of local plan that is envisaged as being potentially out-of-date: that is, one where the evidence base dates from long ago, and where circumstances have changed so that the plan may not now adequately reflect current needs.
31. Furthermore, the FCS pre-dates the NPPF. As already noted, the NPPF places emphasis on ensuring that local plans set out to meet the full objectively assessed need (OAN) for housing, as far as is consistent with other relevant policies. This is a significant change compared to the previous national policy in Planning Policy Statement 3 (PPS3), which was in place at the time when the FCS was adopted. Although the relevant part of the NPPF (paragraph 47) is couched in terms that relate principally to plan-making, the Courts have determined that the same principles should be assumed to apply equally in decision-making, including development control decisions<sup>4</sup>. In the Borough of Fareham, the Council accepts that the FCS was not informed by any assessment of full OAN, and neither does it attempt to explore how far the OAN could be met. It follows that, in respect of matters relating to housing needs and targets, the policies of the FCS cannot be said to be consistent with the approach advocated in the NPPF. Paragraph 215 of the latter makes clear that in such cases, development plan policies may carry less weight relative to national policy and other considerations.
32. It is true that the Council's land supply calculations are not reliant solely on the FCS, because they also take account of the 2012 SHS, which is a more recent document, based on data that is more up to date than the FCS. But the SHS, like the FCS, is not derived from any assessment of full OAN, and does not address the question of what is the OAN, or whether it can be met. In the absence of knowing the full OAN, it seems to me that the 5-year supply exercise cannot serve its intended purpose. Consequently, merely adding an SHS element onto the Policy CS2 housing requirement does not overcome the fundamental shortcomings of the FCS itself, or those of any land supply calculations based on it.
33. I therefore conclude that the weight that can be given to the Council's calculations, based on the FCS and the SHS, is limited. This being so, it seems to me that the next step must be to look at any other available evidence of housing needs, and to assess whether, for the purposes of this appeal, this is likely to provide a better guide to OAN.

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<sup>3</sup> PPG 3-030 (emphasis added)

<sup>4</sup> Gallagher Homes Ltd and Lioncourt Homes Ltd v Solihull MBC: [2014] EWHC 1283 (Admin)

*The alternative housing requirement - based on OAN*

34. I therefore turn to the appellants' proposed alternative, of using the figures from the 2014 SHMA report. In considering the SHMA, I have taken particular account of the letter on this subject from the Minister of State for Housing and Planning, issued on 19 December 2014, after the close of the inquiry, and the appeal parties' comments on the contents of that letter.
35. In the case of the South Hampshire SHMA, there can be no doubt that the report's intention and main purpose is to quantify the OAN, for the sub-region as a whole, and for its constituent housing market areas (HMAs) and districts. This aim is made clear, both in the report's own introduction, and in the officers' report which accompanied it to the PUSH joint committee, in January 2014. The SHMA report examines in considerable detail the various alternative demographic projections, market signals, economic trends, and the needs of different groups, including the need for affordable housing. Having done so, it presents a number of housing need scenarios, reflecting a range of differing assumptions. Without question, this is a substantial body of work, and one that appears both comprehensive and thorough.
36. The SHMA report pre-dated the coming into force of the PPG. However, it was prepared in the light of the earlier draft version, and against the established background of the NPPF, and its methodology appears broadly consistent with the subsequent guidance. The SHMA has yet to be fully tested, but nonetheless, it has evidently been accepted by the PUSH authorities, including Fareham, as a basis for the forthcoming review of the SHS and subsequent local plans. Moreover, the very fact that the SHMA has been commissioned jointly, on behalf of all the South Hampshire authorities, gives it added weight.
37. Certainly, the SHMA figures have not been moderated to allow for any constraints, or to take account of any opportunities for cross-boundary co-operation. However, these are not necessary for the purposes of defining the OAN. A good deal more work will be required before the SHMA figures can be translated into proposed housing policy targets. But that does not prevent those figures from being used in a 5-year land supply calculation now, because this is exactly what the PPG advises in a situation where the adopted plan has become out of date. At the inquiry, the Council's witness agreed that the SHMA represents the best and most up-to-date evidence of OAN currently available, and I see no reason to disagree with that view.
38. For these reasons, I conclude that the 2014 South Hampshire SHMA appears to represent a respectable and credible picture of the OAN for housing in Fareham. As such, it seems more likely to present a realistic picture of housing need than the FCS. Of these two options therefore, it seems to me that the SHMA provides the more suitable basis for a 5-year land supply calculation at the present time.

*The OAN figure*

39. Although the SHMA covers a wide range of alternative scenarios, there is agreement between the Council and the appellants that, if the SHMA-based approach is used, then the most appropriate set of figures for the purposes of this appeal is that referred to as 'PROJ2 - Midpoint Headship'<sup>5</sup>. This is

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<sup>5</sup> As set out in the SHMA report at Appendix U, Table 19 (on p51 of the Appendices)

essentially a demographic-based projection of housing need linked to the ONS sub-national population figures, with an adjustment for future changes in migration, and incorporating a household formation rate mid-way between those of the 2008-based and 2011-based DCLG projections. On this basis, Fareham's OAN, over the period 2011-36, would be 395 dwellings per annum.

40. Despite this measure of agreement, some of the evidence presented at the inquiry still questions whether 395 p.a. is high enough, having regard to the level of need in the affordable housing sector, and the need to avoid restricting economic growth. Even the Council's own witness admitted that economic trends were more likely to push the OAN up from that figure rather than down, and that on any basis, the full OAN was unlikely to be less than 395 p.a. However, it is not the function of this appeal to attempt to determine the future level of housing required in Fareham. The reason for exploring these matters is simply to choose the most appropriate figure for testing the 5-year supply at this point in time. None of the evidence identifies any other specific figure within the SHMA as being preferable to 395 dwellings per annum.
41. In passing, I note the Council's point that just because 395 p.a. is the average across the whole of the SHMA's 25-year period, that does not necessarily mean that the annual rate should be constant throughout. This may be so, but again, there is no specific evidence to support any alternative phasing. In the light of all the evidence before me, I conclude that 395 dwellings p.a. is a reasonably robust basis on which to proceed.
42. On this basis therefore, 5 years' worth of the annual OAN would be 1,975 dwellings. With the addition of a 5% buffer, which is not disputed, the overall 5-year requirement becomes 2,074 units<sup>6</sup>.

*The Council's suggested adjustment for over-delivery in previous years*

43. This requirement of 2,074 exceeds the Council's claimed supply of 1,926 dwellings<sup>7</sup>. However, the Council argues that the requirement should be reduced because, during the period 2006-14, housing completions exceeded the requirement in Policy CS2 by 401 units.
44. In putting forward this argument, the Council relies on paragraph 3-036 of the PPG, which states:  

*"In assessing need, consideration may be given to evidence that a Council has delivered over and above its housing needs". (3-036)*

In the light of this advice, the Council's case is essentially that this means that the past 'overprovision' should be deducted from the requirement for the next 5-year period, in full, irrespective of whether that requirement figure is based on the FCS or the SHMA.
45. I have considered this argument carefully. However, the PPG advice relates specifically to a situation where housing delivery has exceeded the area's housing needs, rather than a policy requirement. In this case, for the reasons explained above, I have come to the view that the Borough's housing needs are now more accurately expressed in the SHMA projections than in the FCS.

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<sup>6</sup> In the parties' evidence this is shown as 2,075, due to rounding the buffer from 19.75 to 20 units for each individual year

<sup>7</sup> As amended by Mr Home in oral evidence, from the figure of 1,876 which appears in the statement of common ground

Measured against the SHMA figure of 395 units per annum, there has been no over-provision or over-delivery.

46. I appreciate that the SHMA was only published in January 2014. But it relates to a period that started from April 2011, and it is therefore logical to take account of the housing needs that have arisen over the whole of that period. I fully accept that during 2011-14, the Council could not have been expected to meet a need which it was not aware of at the time, but that is not the point here<sup>8</sup>. With the benefit of the information now available, what was previously seen as an over-delivery against the FCS requirement during those three years, can now be seen to have been in reality a slight under-delivery compared to the level of actual need.
47. For the years 2006-11, there is no assessment of OAN. Housing completions in that period exceeded the relevant policy requirement in the FCS, but that does not mean that they exceeded the need. And in any event, this period prior to 2011 is now somewhat historic. I appreciate that 2006 was the start of the FCS period, but now that the FCS is no longer the best reference point for future housing needs, it becomes questionable whether housing completions from before 2011 have any continuing relevance.
48. Furthermore, even if I were to take a different view on these matters, so that the 401 dwellings over-delivery against the FCS were to be deducted from the SHMA-based requirement as suggested, it is far from clear why the whole of the 401 should be offset against the needs of just the next 5 years. I appreciate that this would mirror the 'Sedgefield method', but that approach is normally used where the past performance has been one of under-provision, and in that kind of situation there is consequently a clear imperative to achieve a rapid increase in the rate of delivery. In the reverse situation, as here, there is no such imperative. Arguably, the effect would be a sharp reduction, which would be at odds with the NPPF's aims to maintain continuity of supply and boost overall provision. The Council has presented no cogent rationale for this approach.
49. The PPG advice referred to above allows for consideration of the effects of past over-delivery, but does not specify what action should then be taken. It may be that in some circumstances an adjustment to the requirement for future years would be justified, but here, for the reasons that I have explained, that is not the case. I can see nothing in the PPG which sanctions the approach now proposed by the Council in deducting 401 units from the requirement side of the 5-year supply calculation.
50. I therefore conclude that no adjustment should be made in respect of the past over-delivery against the FCS requirement.

*The supply side: Welborne*

51. The Council anticipates 500 completions, within the 5-year period, at the proposed new settlement of Welborne. This is supported by the planning and development programme agreed with the scheme's promoters and other relevant agencies, which indicates work starting on site in March 2016, and the first 120 dwellings being completed by March 2017. The Council acknowledges

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<sup>8</sup> As noted at the inquiry, this argument might be relevant in other circumstances, such as where the point at issue relates to whether there has been 'persistent under-delivery' for the purposes of the NPPF buffer; but the issue here is distinct from that type of assessment

- that this programme is both challenging and ambitious, but regards it as achievable.
52. However, the planned scheme is for a very large development, amounting to some 6,500 dwellings overall, plus employment, retail and other land uses. In terms of the practicalities of development, the site is completely undeveloped land, and major new infrastructure works of all kinds will be needed. A connection to the M27 is required, involving a new junction and slip roads. Developer partners, to take the lead in house-building and infrastructure works, have not yet been identified. Some of the land is not yet within the control of the current promoters, and the possible need to use compulsory purchase powers has not been ruled out. Although the Council maintains that the scheme will be financially viable, it admits that viability has been identified as a significant issue, and remains under review.
53. In terms of its planning status, although the general location of the development has been identified for many years, the formal allocation and specific site boundaries remain to be confirmed in the Welborne Plan, which is still under examination. No planning permission exists, nor has an application been made. Any application is likely to be subject to an environmental assessment, for which some of the necessary survey work will be limited as to the time of year. Some parts of the site apparently have protected status under European legislation, and a mitigation strategy may need to be agreed with Natural England before an application can be considered. There is no clear evidence as to how much of this work has already been done. I have no reason to doubt that ultimately the hurdles can be overcome, but that does not mean that they can be overcome quickly.
54. I note the Council's suggestion that, if necessary, a first phase of 500 dwellings could be brought forward as a stand-alone scheme, in advance of the new motorway junction and other new facilities. But there is no proper evidence regarding the feasibility of this option, or its effects on the development programme. The Welborne Plan clearly seeks a comprehensive approach, as set out in draft Policy WEL4.
55. The NPPF's test for inclusion in the 5-year supply includes the requirement that sites should have a realistic prospect of delivering houses within that timescale. At the inquiry the appellants' witness accepted that there was a possibility of up to 50 units coming forward within the 5-year period, although no more than that. I do not disagree with that assessment. But a mere possibility is not the same as a realistic prospect.
56. There can be no doubting the amount of work that has already gone into the Welborne scheme, or the commitment of all the parties involved. However, it is equally clear that there is still a long way to go before any houses can start to be built. For a development of this scale, with no planning permission or current application, nor yet even a detailed site allocation, five years is not a long time. From the evidence presented, it seems to me that the Council's development programme for Welborne relies at each stage on the absolute minimum timescales, or less. That approach may have its merits in some other context, but for the purposes of assessing the 5-year supply, it lacks flexibility. For this purpose, it would be more realistic in my view to assume that the development is likely to come forward in a slightly longer timescale, pushing the first completions beyond the 5-year period.

57. I conclude that the Council has failed to show a realistic prospect that development at Welborne is likely to contribute to the 5-year supply. The site therefore cannot be regarded as deliverable at this stage, in terms of the NPPF requirement. This reduces the Council's claimed supply by 500, to a maximum of 1,426 units.

*The supply side: other disputed matters*

58. A number of other sites in the Council's supply, totalling 202 units, are disputed by the appellants. I appreciate that some of these do not yet have planning permission. However, the information that the Council has provided indicates that the sites are likely to come forward within the requisite period. Some are proposed allocations in the draft DSP, which remain to be considered, but I am not aware of any objections to the principle of development on any of these sites. Some of the sites have other issues to be addressed, relating to access, trees and other detailed matters, but there is no suggestion that these are likely to be insoluble. None are so large that they would require more than five years to complete. In all of these cases, there is sufficient evidence to justify treating these sites as deliverable.
59. The Council's supply figures also include a windfall allowance of 100 dwellings across the 5-year period. I accept that this may involve a risk of some overlap with sites that are counted in other categories. But on the other hand, the Council's supply does not count identified sites of less than five units, including those with permission, which total 139 units. The Council suggests that, for the purposes of this appeal, these two figures are close enough to offset each other. In the interests of avoiding unnecessary complexity, I agree.
60. I therefore make no further adjustment to the Council's supply figure in response to the disputed sites or the windfall allowance. But in any event, in the light of the conclusions that I have already reached above, these matters do not affect the final outcome of the land supply calculation.

*Conclusions on housing land supply*

61. From the above, I conclude that the 5-year requirement, based on the best evidence of the OAN, should be 2,074 dwellings. This requirement should not be adjusted to take account of over-delivery prior to April 2014. Against this, the Council's maximum claimed supply is only 1,926 dwellings. The supply must therefore be less than the minimum 5 years required by the NPPF.
62. In addition, the Council's figure over-states the supply, by including 500 units at Welborne, which should not yet be counted as deliverable within the relevant 5-year period. When these are deducted, the realistically deliverable supply becomes 1,426 units. This amounts to only around 3.4 years.
63. Although the DSP and WP are at the examination stage, there is no evidence to suggest that the adoption of those plans in the near future would significantly change the housing supply situation from that considered at this inquiry. All in all, I conclude that a 5-year supply has not been demonstrated.
64. In the light of this finding, NPPF paragraph 49 requires that any relevant policies for the supply of housing be treated as out-of-date. For the purposes of the present appeal, it is not disputed that these include Policy CS14, in so far as the latter provides for settlement boundaries, and seeks to restrict housing development anywhere outside them. Accordingly, although the appeal site is

outside the boundary of Lower Swanwick, the resulting in-principle conflict with Policy CS14 carries relatively little weight.

65. In addition, the lack of a 5-year supply also means that added weight should be given to the benefits of providing housing to meet local needs.

### **Effects on the area's character and appearance**

#### *Effects on the character and appearance of the countryside*

66. In policy terms, the countryside is defined by the FBLP proposals map. On that map, the settlement of Lower Swanwick appears separated from the River Hamble by a continuous swathe of countryside, coloured green, and the appeal site is included in that area. Based on the proposals map, the loss of the appeal site would bring the urban area closer to the river, reducing the remaining countryside at that point to little more than a narrow strip along the water's edge. However, that is an impression conveyed by a map produced for a particular purpose. As its name suggests, the proposals map is concerned with policies and the control of development in the future; it is not necessarily intended to depict what exists now, nor can it be definitive in that respect. And in any event, for the reasons explained earlier, the settlement boundaries currently carry reduced weight, due to the lack of a demonstrated housing supply. For the purposes of this appeal therefore, it seems to me that any assessment of the appeal site's contribution to the countryside cannot usefully be done simply by reference to the FBLP proposals map. Rather, such an assessment should be based on what is seen on the ground.
67. The appeal site comprises an undeveloped grass paddock, currently used for grazing horses. To that extent, it might be arguable that the site has some resemblance to open countryside. However, the site lies at the junction of Lower Swanwick's two main roads, Bridge Road (the A27) and Swanwick Lane, which is effectively the settlement's centre. On its south-eastern and north-eastern sides, the site abuts existing residential areas. Adjacent to Swanwick Lane there is also a children's play area. To the south-west and north-west, fronting the river, is an extensive area of boat yards, workshops, moorings and related development, plus The Navigator pub and its car park. The appeal site is thus surrounded on all sides by urban land uses and built development, and at no point does it abut or connect with any other undeveloped or un-urbanised land. Consequently, notwithstanding its designation as countryside, what is seen on the ground amounts to no more than a relatively small, self-contained patch of vacant land, wholly enveloped within the built-up area.
68. How the site looks in reality is therefore quite different from the impression gained from the proposals map. To a large extent, this difference is explained by the treatment of the boatyards which encircle the appeal site on two sides. On the proposals map these are included in the countryside, thus creating the apparent connection between the appeal site and the river, and thence to the more open countryside beyond. I take no issue with this approach in terms of the policies that this implies for the yards themselves. But in terms of their effect on how the appeal site is perceived, the reality is that the boatyards comprise mainly large-scale, industrial-style buildings and a large expanse of hardstanding. Visually, these appear as an integral part of Lower Swanwick's built-up area. As such, their effect is not to link the appeal site to the river and

countryside, but rather to separate it from those, and to enclose it within the settlement.

69. In addition, the Swanwick Marina site, which includes the greater part of this boatyard area, has planning permission for redevelopment, including a pavilion building of up to 3 storeys, with retail units, bar and restaurant facilities, plus new workshops and offices, and 49 dwellings. The effect of that scheme, it seems to me, can only be to reinforce the urban character of the marina/boatyards area, further consolidating the settlement pattern and the appeal site's sense of containment within the urban area.
70. Similarly, to the north of the appeal site, the settlement boundary excludes some of the residential properties at Green Lane, suggesting a connection between the appeal site and the countryside beyond. However, as I saw on my visit, Green Lane is entirely residential in character, and functionally is fully part of the settlement of Lower Swanwick. Whilst the excluded properties are relatively low-density, a number such as 'Highfield' and 'Genesta' have been extended or replaced, becoming more prominent as a result. Consequently the Green Lane residential area is a highly visible part of the backdrop to the appeal site. Again, I do not mean to question the settlement boundary itself, as far as it relates to the Green Lane area, or the policies to be applied there. But in relation to the appeal site, the presence of residential development along the full length of its north-eastern boundary contributes to the impression of a site encircled by existing development, and reinforces the site's visual containment within the settlement.
71. This impression of containment is increased yet further by the dense woodland belt that runs along the appeal site's north-western boundary, partly within the site itself and partly on adjoining land. Some of the trees in this belt result from the additional planting that was carried out a few years ago. I note the comments made at the inquiry as to the possible motive for that planting, but this has no relevance to the planning merits of the site or the proposed development. To my mind, the tree belt has an attractive, naturalistic appearance, and continues the line which is already established along the top of the river bank further to the north. Its effect is to further reinforce the site's separation from the river, and its association with the built-up area.
72. I note the contents of the 1996 Landscape Character Assessment (LCA)<sup>9</sup>. That report found that the appeal site had 'strong visual links with the river and boat-related activities on the south side of the road'. That may have been so then, and indeed might still be so. But the boat-related activities referred to must presumably have been those in and around the boatyards, and for the reasons already given, my view is that that area has more affinity with the built-up area than the countryside. In any event, I can see nothing in this comment that could be said to endorse the view that the appeal site formed part of the countryside, either then or now. Neither is there any support for that view in the 2012 LCA<sup>10</sup>; indeed that report includes the appeal site in the urban area.
73. There are mid-range and longer views of the site from the A27 river bridge, and the railway bridge, and from Lands End Road on the opposite bank. But from all of these viewpoints, the site is framed by buildings and urban land

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<sup>9</sup> Fareham Borough Landscape Assessment : Scott Wilson Resource Consultants, May 1996

<sup>10</sup> The Hamble Valley Integrated Character Assessment : Hampshire County Council, May 2012

uses on all sides. Indeed, in respect of the view from Lands End Road, the Council made the point more than once at the inquiry, that the appeal site is the only piece of green space or open land that is visible. In addition, in all of these views, the site is partially screened by the tree belt or boatyard buildings. In none of them is the appeal site a main focus or a key element of the view. No other significant public viewpoints have been identified, other than from the roads immediately adjacent to the site itself. In my opinion all of these available viewpoints merely serve to reaffirm my earlier judgement, that the site's setting and context is formed primarily by the built-up area of Lower Swanwick.

74. In these circumstances, I conclude that the appeal site, in its undeveloped state, contributes nothing of any significance to the character or appearance of the countryside. It follows from this that, whatever visual impact the development might have, that impact would not be likely to significantly affect the countryside.

*Effects on the character and appearance of Lower Swanwick - loss of openness*

75. Seen from within Lower Swanwick, the appeal site appears essentially as an open, grassed field, sloping towards the A27. There is an attractive, medium-sized native poplar tree in one corner, at the Swanwick Lane junction, and the woodland belt on the opposite boundary, but there is no suggestion that the proposed development would put these at risk. In all other respects, the site is featureless and unremarkable.
76. If the site were developed as proposed, its present openness would be lost. However, as far as I am aware, the site has never been formally identified as an important open space, or any similar designation based on its townscape value or any contribution to the character or appearance of the settlement. Bearing in mind the other planning considerations discussed above, and especially the urban nature of the location, and the unmet need for housing, in these circumstances the loss of openness on its own is not a compelling objection.
77. Development on the lower part of the site could potentially obstruct views towards the waterfront from Swanwick Lane and the play area. Although the river itself is not visible from here, its presence is signalled by the sight of the many boat masts which extend above the roofs of the boatyard buildings, and I can appreciate why that sight would be missed by residents. But that consideration alone is not overriding. The site is not in a conservation area, nor would the proposed development appear to affect any views into or out of any such areas. The view from Swanwick Lane was not identified as a consideration in the design officer's pre-application comments, or in the planning officer's report, nor in the refusal reasons. Nor was it identified in either of the relevant LCAs. There is also no evidence that this was seen as an issue in the Council's earlier decision on the Swanwick Marina scheme, which seems likely to have a greater impact on the same view. Consequently, I am not convinced that the view from Swanwick Lane is such an important planning consideration as to outweigh the other matters that I have identified.
78. And in any event, the existing views need not be lost altogether, because layout and design are reserved matters. If the Council regards the views from Swanwick Lane as a priority issue, there seems no reason why the height and disposition of the buildings could not be designed to take this into account, by

creating gaps and preserving lines of sight where necessary. The current illustrative layout does not do this, but that plan is not binding, either on the Council or a future developer. Development on the remainder of the site would have little or no impact in terms of views towards the river. Given the size of the site as a whole, and the lack of constraints in most other respects, I see no reason why an acceptable alternative scheme could not be designed which takes account of the relevant viewpoints from within Lower Swanwick.

79. I also note the other points made in support of the retention of some openness at the site's southern corner, to create a landscaped area around the road junction and the poplar tree. I agree that this could well be an attractive approach, and this might be one possible way of producing the urban design focus that the 1996 LCA saw a need for here. But there is no reason why this should be the only way. In any event, for the same reasons as above, an outline permission based on the present application would not prevent this or any other approach from being followed at the reserved matters stage.
80. And furthermore, looking at the site as a whole, it seems to me that at that stage there would be the opportunity to seek to secure a high-quality scheme which could make better use of the land than at present, and which could enhance the urban townscape at this potentially important focal point. In the present outline application there is no guarantee that this opportunity would be realised, but the outcome would be at least partly in the Council's hands.
81. For these reasons, I have come to the view that the loss of the appeal site in its undeveloped state would not have any unacceptable adverse impact on the character or appearance of Lower Swanwick, and indeed could prove beneficial.

*Effects on Lower Swanwick – the quantity of development proposed*

82. Averaged across the site, the proposed development of 37 dwellings would amount to a density of about 32 dwellings per hectare (dph). That is slightly higher than the average within the surrounding residential area, but not unduly so. Nothing in the NPPF or PPG suggests that new development should be required to match that of its surroundings as a matter of course. Rather, the emphasis is on making good use of land, encouraging innovation, and good design, whilst still respecting local character and identity.
83. If development on the lower part of the site were restricted for any of the reasons discussed above, that would tend to increase the density of the remainder of the site, to above 32 dph. At the extreme, if all of the built development were concentrated in the upper area, the density there would be around 47 dph. But that would be offset by a lower density in the lower area; it would not change the overall density of the development as a whole. The existing settlement itself contains a wide range of variation in densities, both above and below what is now proposed; including lower density at Green Lane, but higher in the Swanwick Lane terraces, the Swanwick Quay flats, and the proposed Marina development. There is nothing inherently objectionable about such differences.
84. I accept that the submitted illustrative plan has some shortcomings. I agree that it would be desirable for the development to present an active frontage to the public realm, including Swanwick Lane and the play area, and that issues such as overlooking and relationships to surrounding properties need careful

attention. But all of these are reserved matters, and there is nothing to suggest that they cannot be resolved at the appropriate stage.

85. I note that there is now no dispute that the north-western tree belt could be satisfactorily protected by the relevant provisions contained in the undertaking, together with a buffer zone which could be secured by condition.
86. Having regard for all the evidence before me, I can see no reason why an outline permission for 37 units should not be able to produce a satisfactory detailed scheme which satisfies national and local design policies.

*Other matters relating to effects on character and appearance*

87. Although the appeal site was included in the coastal zone that was identified in the FBLP, that policy has now ceased to have any effect. I note the suggestion that the 'coastline' and 'coastal locations' now referred to in Policy CS14 must be the same as that area, but this does not follow. The areas in question are not defined on any map. Whilst Lower Swanwick might be described as being just within the upper reaches of the river estuary, it is some way from what would normally be considered the coastline. In my view, the area is clearly not the kind of 'undeveloped coast' to which paragraph 114 of the NPPF refers. In any event, for the same reasons as those given above, I do not consider that the development would have any significant adverse effect on the character or appearance of the coastal area, or that of the Hamble estuary.
88. As I have already indicated, I appreciate that the site is valued by local people. However, the NPPF advice on protecting 'valued landscapes', in paragraph 109, is placed in the context of conserving and enhancing the natural environment. In the present case, in view of my conclusions on the above matters, it seems to me that the appeal site does not contribute significantly to the natural environment in any of the ways to which this paragraph is directed. I can therefore find no reasonable basis for applying paragraph 109 here.

*Conclusions regarding the effects on character and appearance*

89. I conclude that the proposed development would have no material adverse effects on the character or appearance of the countryside, or of the settlement of Lower Swanwick. As such, it would not conflict with any of the relevant policies, including FLBP Policy DG4, or FCS Policies CS9, CS14 or CS17.

**Other matters**

*Traffic and safety*

90. I note the concerns raised by local residents, particularly concerning traffic, congestion and highway safety. I saw on my visit that local roads are already busy, especially in the peak periods, and the development now proposed would add more traffic to the network. However, as a percentage of the existing flows, the increase generated by 37 dwellings would be negligible, and the proposed design of the new junction on Swanwick Lane, including the proposed 'keep clear' road markings, would meet all of the Highway Authority's safety requirements. There are therefore no reasonable highway grounds for objection.
91. In addition, the replacement of the existing layby with a new off-street car park would undoubtedly be a safer arrangement for users of the children's play area,

as it would greatly reduce the potential for a small child to wander into the path of a moving vehicle. I appreciate that this might leave some residents looking for alternative overnight parking, but it seems to me that this is outweighed by the safety benefit.

92. A suitable junction design and the early provision of the car park can be secured by conditions.

*Residential amenity*

93. I accept that the proposed development would block views of the river from some neighbouring properties, and I fully understand what this would mean to their owners. However, the loss of private views weighs less heavily as a planning consideration than the other issues that have been identified. There is no reason to doubt that existing occupiers can be adequately protected from more serious impacts such as overlooking, overshadowing or overbearing effects, at the detailed stage. The development therefore need not unacceptably harm living conditions at any existing property.

*Local facilities*

94. I note the comments made about the adequacy of some local facilities. But on my tour of the area, I saw that the site is within reasonably easy reach of schools, doctors, shops and a variety of local employment. Public transport is available by bus and train, at most times of day, and the Highway Authority states that it intends to improve pedestrian and cycle facilities on the A27.
95. I accept that there may be pressures on some local services, especially doctors and schools, but at a time when population numbers are increasing throughout the region, the same is true in many areas, and ultimately the task of adapting to meet future needs is one for the providers of those services. In the present case, this would not be a proper reason to refuse planning permission.

*Wildlife*

96. The various observations relating to wildlife are noted, but the survey evidence shows that the site has limited habitat value. This can be adequately protected and enhanced by condition.

*The legal undertaking*

97. The undertaking provides for a financial contribution of £6,364.00 towards the mitigation of off-site ecological impacts. The need for such a contribution arises because of the development's proximity to designated sites of ecological importance, and the consequent potential cumulative impacts of developments in the area on protected bird species. A framework for such contributions has been agreed between the PUSH authorities under the Solent Disturbance and Mitigation Project, and a specific programme of mitigation works has been identified, focused on the Alver Valley Country Park, in the Borough of Gosport.
98. The undertaking also provides for the setting up of a management company to maintain the development, and for the carrying out of a woodland management plan and other landscaping works, in accordance with details to be approved by the Council.

99. From the information provided, I am satisfied that all of the obligations are necessary, and are properly related to the proposed development, so as to meet the relevant policy and legal tests<sup>11</sup>.
100. I note that a Community Infrastructure Levy (CIL) charging Schedule is in place in the borough, and that the proposed development would also be required to contribute to local infrastructure provision through a CIL payment.

### **Conditions**

101. I have considered the conditions suggested by the Council, and those others discussed at the inquiry, in the light of the tests in NPPF paragraph 206. If permission is granted, I agree that most of these conditions would be needed in one form or another, although with some re-ordering and rewording, to improve their clarity, precision and effectiveness. The conditions that I consider should be imposed on any permission in this case are set out in the attached Schedule.

#### *Conditions to be imposed*

102. Conditions Nos 1 – 3 set out the requirements as to reserved matters and the time limits for submission and commencement. In the light of my earlier conclusions regarding the Borough's housing land supply, I have reduced the time limits to less than the normal statutory periods, to better reflect the urgency of the need. I note the Council's suggested additional wording, but I see no evidence to support a limit of 3 storeys; nor any need for these conditions to refer to the mix of dwelling types.
103. Condition 4 sets out the requirements with regard to affordable housing, which is needed to comply with FCS Policy CS18. I agree that the condition should specify the number of affordable units, and their tenures, but the suggested detailed breakdown as to numbers of bedrooms and floorspaces seems to me over-prescriptive at this outline stage. The suggested contingency provisions relating to right-to-buy, staircasing, mortgagee in possession, and other exceptions, seem to me too imprecise for inclusion in a condition, and I have therefore omitted these.
104. Conditions 5 and 6 set out the requirements for pre-commencement investigations relating to archaeology and contamination. These are necessary to protect the historic environment and the health of future occupiers respectively.
105. Conditions 7 and 8 are aimed at securing the implementation and on-going management of high-quality landscaping, and Nos 9 – 13 provide for the protection of existing trees and hedges. All of these are needed to ensure a good standard of development.
106. Conditions 14 – 20 set out the requirements as to highway works, both off and on-site, and Nos 21 and 22 secure the provision of the proposed play area car park. All of these are necessary in the interests of highway safety and for the convenience of road users. In Condition 22, I have increased the period from 6 to 8 weeks, to ensure that compliance can be achieved.

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<sup>11</sup> In: (i) Regulation 122 of the Community Infrastructure Levy Regulations 2010; and (ii) NPPF paragraph 204

107. Condition 23 requires adequate measures to mitigate noise from road traffic and nearby commercial uses, as defined in the submitted noise report; and Condition 24 seeks the provision of suitable facilities for household refuse. Both are needed to ensure a satisfactory residential environment.
108. Condition 25 calls for ecological mitigation and enhancement, in order to minimise any impacts on biodiversity and secure a net gain in accordance with NPPF paragraph 109. The condition requires further details to be submitted and approved, since the existing ecological report contains limited detail as to any recommended measures.
109. Condition 26 requires compliance with the Code for Sustainable Homes, in accordance with FCS Policy CS15.

#### *Rejected conditions*

110. Having carefully considered all of the other suggested conditions, I find that none of these meet the relevant tests. The Council's proposed requirement for the development to be carried out only in accordance with the submitted illustrative plan would not be reasonable, because layout is a reserved matter, and in any event there is no evidence to suggest that no other form of layout would be acceptable. Equally, the appellants' tentative suggestion of an exclusion area in the southern corner would not be a reasonable condition, since it has not been shown that there is any overriding objection to development in that part of the site.
111. The proposed conditions relating to materials, car parking and cycle storage are unnecessary, as these details can be dealt with at the reserved matters stage. Lighting is adequately covered in the revised on-site highway works condition that I have included at Condition 20, and thus does not need an additional separate condition.
112. With regard to the proposed construction method statement and controls on the hours of construction work, powers are available to prevent obstruction of the public highway, or the deposit of mud, and to prevent nuisance to adjoining occupiers, under other legislation. There are no particular circumstances here that make it necessary to duplicate those controls through planning conditions.

#### **CONCLUSIONS**

113. The proposed development of 37 dwellings would be outside the settlement boundary defined in the FBLP, and would thus conflict with FCS Policy CS14. However, given the lack of a demonstrated 5-year housing supply, the settlement boundary must be regarded as out of date, and the weight that can be afforded to Policy CS14 is reduced accordingly.
114. Despite its designation on the FBLP proposals map, the appeal site does not appear in reality as an integral part of the countryside, nor of the coast, and does not contribute significantly to the character or appearance of those areas. Neither does the site, in its undeveloped state, contribute positively to the character or setting of the settlement. Consequently, no material conflicts arise in respect of any of the policies that are concerned with protecting these areas, in either the development plan or the NPPF.

115. The site lies within the Western Wards area, which is identified in Policies CS6 and CS9 as one of the District's preferred locations for housing development. The local infrastructure and services are adequate to serve a development on the scale now proposed.
116. So, on the one hand, the development would result in the loss of an undeveloped, but otherwise unremarkable, parcel of open land. On the other hand, the proposed development would make a valuable contribution to meeting local housing needs, including affordable housing provision. There would also be a modest public benefit in the provision of the proposed car park to serve the existing play area. And in addition there would be the opportunity, at the reserved matters stage, for the Council to seek to secure a high-quality scheme, which could make better use of the land, and enhance the townscape.
117. In view of the unmet housing need, the benefit of adding 37 new dwellings to the local housing supply commands substantial weight. Together with the car park and the potential for townscape enhancement, it seems to me that the conflict with Policy CS14 and any other harm arising from the development would be significantly and demonstrably outweighed by these benefits.
118. Having regard to the three 'dimensions' of sustainable development, and all of the relevant policies contained in the NPPF, I conclude that the development now proposed would constitute the kind of sustainable development that the NPPF seeks to encourage and promote. I have taken into account all the other matters raised, but none alters this conclusion.
119. The appeal is therefore allowed.

*John Felgate*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

The planning permission to which this decision relates is granted subject to the following conditions (numbered 1 - 26):

### *Reserved matters and time limits*

- 1) No development shall be commenced until details of the appearance, landscaping, layout, and scale (hereinafter called "the *reserved matters*") of the proposed development have been submitted to the local planning authority and approved in writing. The development shall be carried out in accordance with the details thus approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
- 3) The development shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.

### *Affordable housing*

- 4) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to the local planning authority and approved in writing. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the NPPF. The scheme shall provide for 15 units of affordable housing, including 10 for 'affordable rented' tenure, and 5 for shared ownership. The affordable housing scheme shall also contain details of:
  - (i) the proposed mix of types and sizes of the affordable housing units, and their location within the site;
  - (ii) the proposed timing of the construction of the affordable units, in relation to the occupancy of the market housing;
  - (iii) the proposed arrangements for the transfer of the affordable housing to an affordable housing provider;
  - (iv) the arrangements to ensure affordability for the initial and subsequent occupiers in perpetuity; and
  - (v) the occupancy criteria and the means by which such criteria are to be enforced.

### *Archaeology*

- 5) No development shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme of investigation which has been submitted to the local planning authority and approved in writing.

### *Contamination*

- 6) No development shall take place until the site has been investigated for soil contamination, and any such contamination found to be present has been removed or rendered harmless, in accordance with a scheme to be submitted to the local planning authority and approved in writing. In addition:
  - (i) If, during the course of construction, any contamination is found which has not been identified previously, no further work shall take place until that contamination has been removed or rendered harmless, in accordance with additional measures to be submitted to and approved in writing by the local planning authority; and
  - (ii) If any contamination has been found to be present at any stage, either before or during construction, no part of the proposed development shall be brought into use until a verification report has been submitted to and approved by the local planning authority, showing that all such contamination has been treated, and the site

rendered safe for occupation, in accordance with the original contamination scheme and any further measures subsequently agreed.

*Landscaping*

- 7) The landscaping details to be approved under Condition 1 shall include details of all planting and seeding, the surfacing of all hard surfaced areas, all boundary treatments, all re-grading or re-contouring of the land, and any signage and street furniture. The landscaping works thus approved shall be implemented in accordance with the approved details, and in accordance with the timescale specified in the submitted legal undertaking.
- 8) The landscaping details to be approved under Condition 1 shall also include a landscape management plan. Following the implementation of the landscaping works, all of the landscaped areas shall be maintained thereafter in accordance with the details thus approved. Any tree or plant forming part of the approved landscaping scheme which dies, or becomes seriously damaged or diseased, or is removed for any reason, within a period of 5 years after planting, shall be replaced during the next planting season with others of similar size and species.

*Existing trees and hedgerows*

- 9) No development shall take place until a tree and hedgerow protection scheme has been submitted to the local planning authority and approved in writing. The scheme shall contain details of proposed measures for the protection and retention of all of the existing trees and hedgerows on and adjacent to the site during construction. The scheme shall also identify a suitably qualified Arboricultural Supervisor.
- 10) The measures to be approved under Condition 9 shall include protective fencing, and such fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought on to the site, and shall remain in place until the latter have been removed from the site and the development has been completed. Nothing shall be stored or placed in any area fenced in accordance with this condition, and the ground levels within these areas shall not be altered, nor shall any excavation be made, except with the written consent of the local planning authority.
- 11) No tree or hedgerow on the site shall at any time be cut down, uprooted or destroyed, nor be topped, lopped or pruned, other than in accordance with details approved within either the tree and hedgerow protection scheme (under Condition 9) or the landscape management plan (under Condition 8). Notwithstanding this requirement, in the event that any existing tree or hedgerow dies or is lost for any reason, within a period of 5 years from the date of completion of the development, replacement planting shall be carried out in accordance with details to be approved in writing by the local planning authority.
- 12) All works approved under Conditions 9 - 11 shall be carried out in accordance with BS 5837:2012, and shall be overseen by the approved Arboricultural Supervisor.
- 13) The layout details to be submitted under Condition 1 shall include provision for a 5m-wide woodland buffer zone alongside the whole length of the tree belt on the site's north-western boundary, as shown on Plan No PP1220-101-00 (Revision. P2). Within this buffer zone, the land shall be used only for communal purposes, including landscaping, open space, and roadways, and no part of the buffer zone shall be included within the curtilage of any dwelling.

*Access and off-site highway works*

- 14) The proposed new access to the site and related off-site highway works shall be laid out in accordance with the submitted details shown on Plan No. A083488\_PR\_01. These works shall include the removal of the existing layby in Swanwick Lane, the

realignment of the footway alongside it, and the provision of visibility splays of 2.4m x 65m in both directions, all as shown on this approved plan.

- 15) In addition, the following off-site works are to be carried out, in accordance with details to be submitted to the local planning authority and approved in writing:
  - (i) the making good of the redundant footway and layby areas; and
  - (ii) the permanent closure of the existing site access to the north of the play area.
- 16) No development (other than that required to comply with this condition) shall be carried out until the existing layby has been closed, and the site access has been constructed to at least binder course level, including the first 10m of the access road.
- 17) No development or works of any kind (including those specified in condition 16), shall be carried out until a timetable for the full completion of all the access and off-site highway works required under Conditions 14 - 16 has been submitted to the local planning authority and approved in writing. These works shall thereafter be carried out and completed in accordance with the timetable thus approved.
- 18) No new dwelling shall be occupied until 'keep clear' road markings have been provided in Swanwick Lane, in accordance with details to be submitted to the local planning authority and approved in writing.
- 19) Once the visibility splays referred to in Condition 14 have been created, clear visibility within the splay areas shall be maintained thereafter, above a height of 600mm from ground level.

*On-site highway works*

- 20) The details to be submitted under Condition 1 above shall include details of all necessary on-site highway infrastructure, including access roads, turning areas, footways, street lighting and highway drainage, together with a timetable for the implementation of these on-site works. No dwelling shall be occupied until the on-site highway infrastructure serving that unit has been provided, in accordance with the approved details, and the relevant roads and footways finished to at least binder course level. These on-site highway works shall thereafter be fully completed in accordance with the approved timetable.

*Play area car park*

- 21) The layout details to be submitted under Condition 1.1 above shall include details of the proposed new car park for the existing play area adjacent to the site. The car park shall provide a minimum of 6 spaces, and shall be laid out in accordance with the details thus approved.
- 22) The proposed car park to be provided under Condition 21 shall be completed and made available for public use in connection with the play area, no later than 8 weeks from the date when the existing layby is closed. Thereafter, the car park shall be retained and kept available for its stated use.

*Noise mitigation*

- 23) No construction work on any new dwelling shall be commenced until a scheme of noise mitigation, including details of the proposed glazing and ventilation systems, has been submitted to the local planning authority and approved in writing. The submitted details shall demonstrate that the new dwellings are designed not to exceed the following maximum internal noise levels:

Daytime average (all habitable rooms):	35 dB $L_{Aeq}$
Night-time average (bedrooms):	30 dB $L_{Aeq}$
Night-time maximum (bedrooms):	45 dB $L_{Amax}$

*Refuse storage*

- 24) The details to be submitted for approval under Condition 1 shall include details of the provision to be made for the storage of household refuse for each proposed dwelling. No dwelling shall be occupied until the approved provision has been made available for use by the occupiers of that dwelling. Thereafter, the approved refuse storage provisions shall be retained in accordance with the details thus approved.

*Ecological mitigation*

- 25) No development shall take place until a detailed scheme of ecological mitigation and enhancement measures has been submitted to the local planning authority and approved in writing. The scheme shall include a timetable for the implementation of the necessary works, and those works shall be carried out in accordance with the scheme and timetable thus approved.

*Code for Sustainable Homes*

- 26) The proposed dwellings shall achieve Level 4 of the Code for Sustainable Homes. No new dwelling shall be occupied until a final Code Certificate has been issued for that dwelling, certifying that Code Level 4 has been achieved.

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Ground, of Counsel      Instructed by the Solicitor to the Council

He called:

Mr Stephen Jupp, BA(Hons) LLM MRTPI	Planning consultant
Mr Peter Home, MA(Oxf) MRTPI	Adams Hendry

### FOR THE APPELLANT:

Mr Christopher Boyle, QC      Instructed by WYG Planning

He called:

Mr Stephen Brown, BSc(Hons) DipTP MRTPI	Woolf Bond Planning
Mr Duncan McInerney, BSc(Hons) MLD CMLI	The Environmental Dimension Partnership
Mr Martin Hawthorne, BSc(Hons) MRTPI	WYG Planning

### OTHER INTERESTED PERSONS:

Cllr Sean Woodward	Leader of Fareham BC and ward member for Sarisbury
Mr Jim Wood	Chairman, Burr ridge & Swanwick Residents' Association
Mr John Grover	Local resident
Mr Clive Nightingale	Local resident
Miss Sarah-Jane Moore	Local resident
Ms Suzanne Rosenbrier	Local resident (also speaking on behalf of Ms Kate Winkworth, local resident)
Mr Don Frost	Local resident

## **DOCUMENTS TABLED AT THE INQUIRY AND AFTERWARDS**

### **TABLED BY THE APPELLANTS**

- 1 Table: housing completions against requirement, 2006-14
- 2 Eastleigh Borough Local Plan examination: Inspector's preliminary report on housing needs and supply, 28 November 2014
- 3 Dartford BC v SoS and Landhold Capital Ltd: judgement dated 24 June 2014 [*2014 EWHC 2636 Admin*]
- 4 Photographs of the appeal site from the railway line
- 5 Photographs of the appeal site from Bridge Road, December 2014
- 6 Swanwick Marina – approved plan
- 7 Secretary of State's appeal decision – Droitwich Spa (APP/H1840/A/13/2199085)
- 8 Secretary of State's appeal decision – Ramsgate (APP/Z2260/A/14/2213265)
- 9 Appeal decision – Swanley (APP/G2245/A/13/2197478)
- 10 Bus timetables
- 11 Train timetables: Bursleden - Southampton
- 12 Train timetables: Bursleden - Portsmouth
- 13 Welborne strategic framework plan, annotated by Mr Hawthorne to show land not controlled by the promoters
- 14 Correspondence relating to screening direction for Welborne development
- 15 Executed unilateral undertaking, dated 9 December 2014
- 16 Appellants' suggested wording for a condition restricting development on part of the site, and related plans
- 17 Mr Boyle's closing submissions
- 17A Email dated 23 December 2014 in response to the Ministerial letter re SHMAs

### **TABLED BY THE COUNCIL**

- 18 Appeal decision – Storrington (APP/Z3825/A/13/2202943)
- 19 Appeal decision – Emsworth (APP/L3815/A/13/2198341)
- 20 Emails relating to various housing supply sites
- 21 Welborne – planning programme chart
- 22 The Solent Disturbance Mitigation Project Interim Framework – report to PUSH Joint Committee, 25 March 2014, and minutes
- 23 Mr Home's summary statement
- 24 Inspector's decision re land at Blaby (S62A/2014/0001)
- 25 Swanwick Marina – planning permission and officers' report
- 26 S Northants v SoS and Barwood Homes Ltd: judgement dated 10 March 2014 [*2014 EWHC 570 Admin*]
- 27 Mr Ground's closing submissions
- 27A Email dated 22 December 2014 relating to the Ministerial letter re SHMAs

### **TABLED BY THE OTHER PARTICIPANTS**

- 28 Cllr Woodward's statement
- 29 Mr Wood's statement
- 30 Mr Grover's statement
- 31 Mr Nightingale's statement
- 32 Miss Moore's statement
- 33 Ms Winkworth's written submission (presented by Ms Rosenbrier)
- 34 Aerial photograph dated 2013, tabled by Mr Grover

### **OTHER TABLED DOCUMENTS**

- 35 Statement of Common Ground on 5-year housing land supply
- 36 Extracts from Core Strategy 'interactive' proposals map
- 37 Proposed condition re affordable housing (tabled jointly)
- 38 Letter from the Minister of State for Housing and Planning, dated 19 December 2014, re Strategic Housing Market Assessments



## Appeal Decision

Inquiry held on 25 April 2017

Site visit made on 27 April 2017

by **S R G Baird BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 14 August 2017**

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**Appeal Ref: APP/A1720/W/16/3156344**

**Land north of Cranleigh Road and west of Wicor Primary School,  
Portchester, Fareham, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Persimmon Homes South Coast against the decision of Fareham Borough Council.
  - The application Ref P/15/0260/OA, dated 17 March 2015, was refused by notice dated 24 March 2016.
  - The development proposed is residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping.
- 

### Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping on land north of Cranleigh Road and west of Wicor Primary School, Portchester, Fareham, Hampshire in accordance with the terms of the application, Ref P/15/0260/OA, dated 17 March 2015, subject to the conditions contained at Annex A of this decision.

### Preliminary Matters

2. The application was made in outline with all matters other than means of access reserved. The appellant and the local planning authority (lpa) confirmed that the drawings that comprise the planning application are Drawing Nos. LOC 1 Rev D – Location Plan and J-D1708.00 - Site Access Layout and Highway Improvements. The application plans are supported by 2 Illustrative Plans; Drawing Nos. 01 Rev W- Illustrative Site Plan and 2498-SK-04 Rev P3 – Indicative Landscape Strategy.
  3. The appellant has submitted a signed S106 Unilateral Undertaking (UU) providing for financial contributions towards: (a) mitigation in accordance with the Interim Solent Recreation Mitigation Partnership and (b) the approval and monitoring of a Travel Plan. In addition, the UU provides for the laying out of the public open space and that 40% of the dwellings would be affordable housing units.
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4. An application for an award of costs was made by Persimmon Homes South Coast against Fareham Borough Council. This application is the subject of a separate Decision.
5. Following the close of the inquiry, the Supreme Court issued a judgement<sup>1</sup> concerning the interpretation of paragraph 49 of the National Planning Policy Framework (Framework) and its relationship with Framework paragraph 14. The parties were given an opportunity to comment on the implications of this judgement for their cases. I have taken the judgement and the parties' comments into account in coming to my decision.

### **Main Issues**

6. These are:
  - (i.) whether the lpa can demonstrate a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land supply (HLS);
  - (ii.) the effect on the supply of Best and Most Versatile (B&MV) agricultural land; and
  - (iii.) the effect on the character and appearance of the area.

### **Reasons**

7. The development plan for the area includes the Core Strategy (CS) adopted in August 2011, the Local Plan Part 2: Development Sites and Policies adopted in June 2015 (LP2) and the Local Plan Part 3: The Welbourne Plan adopted in June 2015 (LP3). The lpa has commenced a Local Plan Review (LPR). It is anticipated that a draft Local Plan will be published for consultation in September 2017.

#### Issue 1 - Housing Land Supply

8. Framework paragraph 47 seeks to boost significantly the supply of housing. Lpas are enjoined to ensure that Local Plans meet the full, objectively assessed needs (OAN) for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. Lpas are to identify and update annually a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land against their housing requirements with an additional buffer of 5% or 20% where there has been a record of persistent under delivery of housing.
9. Here, the lpa's 5-year HLS calculation is based on the requirements of the CS, in particular Policy CS2, adopted in 2011. The CS has a plan period running from 2006 to 2026 and was produced in the context of the no longer extant regional strategy (The South-East Plan) and the then emerging South Hampshire Strategy (SHS), a non-statutory sub-regional plan produced by a consortium of several lpas.
10. Given the CS was adopted several months before the publication of the Framework and the CS housing requirement is largely based on the regional

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<sup>1</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).

strategy it is not a Framework compliant OAN. Although LPs 2 and 3 post-date the Framework, neither plan undertakes the identification of an OAN.

11. Given the above, and in light of the Navigator appeal decision<sup>2</sup>, the appellant submits that the starting point for calculating the HLS position should be based on the April 2016 Objectively Assessed Housing Need Update produced for the PUSH<sup>3</sup> authorities and the June 2016 PUSH Spatial Position Update. Both studies identify an OAN for Fareham that is materially higher than the CS housing requirement. The Ipa's position is that as LPs 2 and 3 have been found sound, and in light of PPG and Ministerial guidance on the use of SHMAs the housing requirement used to calculate the HLS is that contained in the CS. The Ipa's position is that until the LPR has been the subject of consultation, examination and adoption it is premature to use the PUSH OAN as the Borough's housing requirement.
12. PPG<sup>4</sup> advises that housing requirement figures in an up-to-date, adopted LP should be used as the starting point for calculating the 5-year HLS. PPG advises that considerable weight should be attached to the housing requirement figures in adopted LPs, which have successfully passed through the examination process, unless significant new evidence comes to light. However, PPG notes that evidence that dates back several years, such as that drawn from revoked regional strategies may not adequately reflect current needs. Thus, where evidence in a LP has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs i.e. SHMAs should be considered. That said the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints.
13. In December 2014, in a Ministerial letter, the Government clarified the policy position on emerging evidence in the form of SHMAs. The letter notes that the publication of a locally agreed assessment provides important new evidence and where appropriate will promote a revision of housing requirements in LPs. Lpas are expected to actively consider the new evidence over time and, where over a reasonable period they do not, Inspectors could reasonably question the approach to HLS. The Minister goes on to note that the outcome of a SHMA is untested and should not automatically be seen as a proxy for a final housing requirement in LPs or that it does not immediately or, in itself, invalidate housing numbers in an existing LP.
14. Here, the CS housing requirement is largely based on the no longer extant South East Plan, whose evidence base dates back to at least 2000. It is accepted that the CS does not contain a Framework compliant assessment of OAN and neither LPs 2 or 3 purport to set a housing requirement based on an OAN. The 2014 Ministerial guidance, in my view, restates the advice contained in the PPG and does not, in itself, preclude using up-to date SHMA information to assess the 5-year HLS.
15. The latest assessment of the "Policy-Off" OAN is contained in the April and June 2016 PUSH reports. These documents, as the introduction to the April

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<sup>2</sup> APP/A1720/A/14/2220031.

<sup>3</sup> Partnership for Urban South Hampshire.

<sup>4</sup> Paragraph 030 Ref ID: 3-030-20140306.

2016 report says, provide an analysis of housing need, which for Fareham is 420 dpa and 450 dpa respectively. These are substantial bodies of work that have been carried out in accordance with PPG guidance and at least one lpa has adopted the PUSH OAN calculated for its area as the basis for calculating the 5-year HLS. Here, the lpa acknowledges that the PUSH April 2016 OAN is the best evidence on the OAN for Fareham. I have taken careful note of the Minister's reference to lpa's considering the evidence over time and the reference to a reasonable period. Whilst the 2 reports are relatively recent, the lpa was aware during the Navigator appeal in December 2014 that the OAN identified in the 2014 South Hampshire SHMA was materially higher than the CS requirement. The decision in the Navigator appeal, which was not challenged, was predicated on an acceptance that the 2014 OAN provided a more suitable basis for a 5-year HLS calculation. In my experience it is rare in the extreme to conclude that the "Policy-Off" OAN is likely to reduce and it is clear from the April and June PUSH OAN reports that it continues to rise materially.

16. In line with PPG advice, it is, in my view, reasonable to conclude that the CS/LP 2 housing requirement is materially out-of-date and is derived on a basis that is inconsistent with the Framework. Thus, having regard to the case law<sup>5</sup> referred to, PPG and Framework policy, I consider that the 5-year HLS supply should be assessed on the basis of the PUSH April 2016 OAN.
17. Before dealing with the assessment of the 5-year HLS position, it is appropriate to deal with the matter of whether a 5 or 20% buffer should be added to the housing requirement. The lpa add a buffer to the housing requirement set out in the CS and LP 2, but not to the contribution to be made by the major urban extension at Welbourne (LP 3). The exclusion of Welbourne is predicated on the basis that it is a site specific allocation implementing a large-scale development proposal in the CS. I am not aware that there is support for such an approach either in the Framework or PPG and read on its face the Framework suggests that the buffer should be applied to the requirement as a whole. Accordingly, I consider the buffer figure should be applied to the requirement as a whole.
18. PPG<sup>6</sup> advises that the approach to identifying a record of persistent under delivery inevitably involves questions of judgement in order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing. The guidance indicates that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle. Here, I have details of net completions for the years 2006/07 to 2015/16 and these figures are not disputed by the lpa. For the period 2006/07 to 2010/11 the CS Policy CS2 requirement is applied and from then until 2015/16 the appellant applies the OAN figure taken from the PUSH April 2016 assessment of OAN. This is on the basis that the PUSH OAN figure is calculated from 2011. On this basis, completions only exceed the housing requirement in 2 out of the last 10 years. However, in the period up until 2014 when the then PUSH SHMA identified an OAN of 395 dpa the lpa could not have been expected to meet a

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<sup>5</sup> City and District of St Albans and The Queen (on the application of) Hunston Properties Limited Secretary of State for Communities and Local Government and anr [2103] EWCA Civ 1610 & Gallagher Homes Limited Lioncourt Homes Limited and Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin).

<sup>6</sup> Paragraph 035 Ref ID: 3-035-20140306.

need that it was not aware of. On this basis, allowing for peaks and troughs in the housing market it appears to me that there has been significant under-delivery in only 3 out of the last 10 years. On this basis, the application of a 20% buffer is not, in my view, justified.

19. Turning now to the 5-year HLS, I have considered 2 scenarios. One based on the requirements of CS Policy CS2, the lpa's preferred scenario, and one based on the up-to-date OAN figure. On the CS based approach, the 5-year housing land requirement is some 1,932 dwellings and the lpa claim a deliverable supply of some 2,003 dwellings, a surplus of some 71 units giving a 5.18-years' supply of housing land<sup>7</sup>. However, taking into account my conclusion on the appropriateness of excluding Welbourne from the buffer figure including it within the 5% allowance on the whole of the requirement would still return a HLS marginally above 5-years. The surplus would be reduced to some 13 units; a figure the lpa does not dispute.
20. The appellant disputes the deliverability of 9 of the LP 2 allocations, the deliverability of the brownfield site at Warsash Maritime Academy and the ability of the Welbourne allocation to deliver some 425 dwellings in years 4 and 5 of the HLS calculation. Using the lpa's CS housing requirement figure, the appellant's calculation gives a shortfall of some 1,965 units and estimates a 3.28-years' supply of housing land.
21. In coming to my conclusions on the deliverability of the disputed LP 2 sites, I have taken careful note of the lpa's submissions that the allocated sites were found "sound" by the Inspector when he examined LP 2 and that the sites continue to be listed in the Annual Monitoring Report (AMR). That said, LP 2 was examined in late 2014 based on a draft plan submitted for examination in mid-2014 and no doubt based on evidence obtained during 2013. The November 2016 AMR, other than containing a list, provides no detailed assessment of the sites. These assessments are, in my view, snapshots in time, which in the case of LP 2 were undertaken between 3 and 4 years ago. The deliverability of these sites needs to be kept under robust review and, given the paucity of information contained in the AMR, the value of these in making an up-to-date assessment of the HLS is limited.
22. To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable<sup>8</sup>. PPG<sup>9</sup> indicates that the 5-year HLS must be underpinned by "...robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out."
23. At the inquiry, the lpa provided an updated assessment of the deliverability of the disputed sites. However, the information provided on each site was limited and indeed the lpa's witness acknowledged that he did not have detailed information on the sites. The appellant's submission that the lpa's evidence regarding deliverability was based on, "...discussions with others about discussions with others" is an apt description. In my view, the lpa's evidence on deliverability relating to the LP 2 sites falls well below the

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<sup>7</sup> Table AB 1 submitted by the lpa at the inquiry.

<sup>8</sup> Footnote 11, National Planning Policy Framework.

<sup>9</sup> Paragraph 030 Ref. ID: 3-03020140306.

threshold set by PPG in that it is neither robust nor clearly and transparently set out. I have similar concerns regarding the inclusion within the 5-year supply of 100 units at Warsash Maritime Academy. Although this is a substantial site, the level of detail provided by the lpa on its deliverability is thin and lacks clarity and transparency.

24. LP 3 allocates some 371ha of mainly greenfield land at Welbourne to deliver some 6,000 dwellings and the lpa includes some 425 units within the 5-year supply in years 4 and 5. The delivery of Welbourne is a major undertaking and already the delivery of units has been pushed back in the programme. At one time the lpa considered that the delivery of dwellings would commence in 2016 with 120 units being completed by the end of the first quarter in 2017. Whilst I accept that significant pre-planning work has been carried out, a delivery partner will not be appointed until the beginning of 2018, major planning applications will have to be prepared and already, albeit as a precaution, the lpa is contemplating the use of compulsory purchase powers. Whilst I acknowledge the lpa's commitment to the delivery of Welbourne, on the evidence before me, it would appear that the potential to deliver a significant number of units towards the end of the 5-year period is optimistic.
25. In light of these findings, I am unable to safely conclude that at least 315 units, comprising the disputed list of LP 2 sites and the brownfield site at Warsash Maritime Academy, are capable of being considered as deliverable within the 5-year period. In this context, the lpa cannot demonstrate a 5-year supply of deliverable housing land.
26. In the scenario where the up-to-date OAN is used to derive the 5-year housing requirement and using the lpa's supply figures the lpa accepts that it could not demonstrate a 5-year HLS. At most, the evidence indicates that there would be a supply of some 3.6 years. However, given my conclusions regarding the deliverability of the disputed sites, I consider the HLS would be marginally over 2 years.
27. Drawing all of the above together, on whatever approach is used to identifying the 5-year housing land requirement, the lpa cannot demonstrate a 5-year supply of deliverable housing land. Indeed, on the balance of probabilities the available supply is well below the 5-year threshold.

#### Issue 2 – Best & Most Versatile Agricultural Land

28. The majority of the site is Grade 1 and the remainder Grade 2 agricultural land and is classed as best and most versatile land<sup>10</sup> (B&MV). CS Policy CS16 seeks to prevent the loss of B&MV. The Framework does not place a bar on the development of B&MV agricultural land. Framework paragraph 112 identifies that where development would involve the use of B&MV land, the economic and other benefits of that land should be taken into account and goes on to say where significant development is demonstrated to be necessary the use of poorer quality land should be used in preference to that of a higher quality i.e. apply a sequential approach. Here, given the appeal site extends to some 5.5ha, this proposal is not, in my view, a significant development where the sequential approach is engaged.

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<sup>10</sup> Annex 2, National Planning Policy Framework.

29. CS Policy CS16 was predicated on guidance contained in PPS7<sup>11</sup>, which the Secretary of State in his 2006 decision<sup>12</sup> described as containing a strong presumption against the loss of land of high agricultural value. PPS7 is no longer extant and CS Policy CS16, given that it says in a straightforward manner that it will prevent the loss of B&MV agricultural land without an opportunity to balance potential harm against potential benefits, is, in my view, inconsistent with the Framework and subject to the guidance contained at Framework paragraph 215.
30. The development would result in the permanent loss of B&MV agricultural land and as such would conflict with the provisions of CS Policy CS16. Accordingly, it must feature on the negative side of the planning balance, albeit the scale of the permanent loss would be limited.

#### Issue 3 – Character & Appearance

31. The appeal site abuts but lies outside the defined settlement boundary of Portchester. Whilst the development plan treats the area as countryside it is not subject to any landscape designation. Relevant development plan policies are CS Policies CS14 and 17 and LP 2 Policy DSP6. Policy CS14 indicates that development outside the defined settlement boundary will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Policy CS 17 seeks high quality design and layout and development should respond positively to and be respectful of key characteristics of the area including landscape. Except for certain categories of development, which do not apply in this case, LP 2 Policy DSP6 has a presumption against new residential development outside the defined settlement boundary. As such the proposal would be in conflict with LP 2 Policy DSP6.
32. Core Principles of the Framework seek to: ensure that planning secures high quality design ensuring that account is had to the different roles and characters of different areas recognising the intrinsic character and beauty of the countryside and a contribution to the conservation and enhancement of the natural environment. Framework paragraph 109 reiterates that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.
33. Both parties referred to various landscape character assessments. Of these the Fareham Borough Landscape Assessment examines the finest grain and is, in my view, the most relevant. In terms of landscape character, the appeal site sits on the eastern edge of Local Landscape Character Area (LCA) 12–Cams Wicor Coastal Fringe and to the south and east of LCAs 36 and 38 Urban Areas of Downend and Portchester South. LCA 12 is described as a discrete parcel of open landscape contained by the coast and the urban fringe. Whilst the main feature of this LCA is the extensive parkland and woodland of the Cam Hall Estate on its western edge the description notes that the LCA includes areas of open amenity landscape, fringe pasture and coastal industry to the east. The essential characteristics of the area are: an area of flat or gently undulating land occupied by mixed but open landscapes; a strong coastal influence and a strong fringe character with

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<sup>11</sup> Planning Policy Statement 7: Sustainable Development in Rural Areas.

<sup>12</sup> APP/A1720/A/05/1176455.

valuable areas of open space with attractive views out across Portsmouth Harbour and to Portsdown Hill and the Cams Hall Estate. The enhancement priorities for the area are to: maintain the open unbuilt character, particularly the estuary and coastal margins and improve the landscape quality of areas which lie between the settlement boundaries and the coast.

34. In terms of landscape and visual impact, whilst the appellant and the lpa use different terminology, in my view they both result in broadly the same outcome. Both parties agree that there would be substantial and adverse landscape and visual impacts. What is in dispute is the spatial extent over which these adverse effects would be experienced and whether the appeal site should be classed as a "valued" landscape.
35. In terms of visual impact, I had the opportunity to extensively walk the roads immediately around the site and the publicly accessible areas to the west. In addition, I visited Portsdown Hill and was able to assess the impact of the development from publically accessible vantage points.
36. Within the immediate area of the site from Cranleigh Road along its southern boundary and from Cranleigh Road southwards towards the junction with Gatehouse Road, the visual impact of the development to be at its highest, i.e. substantial and adverse. Further to the west along Cranleigh Road and from vantage points on the public footpaths and open space to the west, parts of the development, mainly the upper storeys and roof planes would be visible. However, the visual impact of the development would be significantly reduced by the degree of separation and the presence of existing tree/hedge planting and new boundary planting that could be conditioned as part of any permission. The magnitude of this impact would range from moderate to minor adverse depending on distance from the site.
37. Given there is no public access to the site and given the extent of intervening planting and industrial development on the foreshore there would be no material impact on views out over Portsmouth Harbour. In this context, the development would only have a limited adverse impact on views towards Portsdown Hill. The development would be in the foreground of the built-up area to the north and east and would not obscure publically available views of the hill from the east.
38. From public vantage points on Portsdown Hill there are sweeping panoramic views across Portchester and Portsmouth Harbour. Whilst the development would be noticeable, it would be seen as a modest extension of the existing built-up development to the north and east and against the backdrop of the housing area to the south of Cranleigh Road and mature planting beyond. The visual impact of the development would be mitigated by the above factors and the degree of separation from Portsdown Hill. Views of Portsmouth Harbour would not be interrupted or obscured and the wide sweep of the panoramic views would be maintained. In this context, the visual impact of the development from these vantage points would be minor.
39. Turning to whether the appeal site should be identified as a "valued" landscape and in the context of Framework paragraph 109 one whose enhanced planning status should be taken account of in the balancing exercise. I have taken careful note of the submissions made by interested persons and I was left in no doubt about their views on value. All landscapes are valued by someone at some time, particularly countryside

that is threatened by development. However, that does not necessarily make it a valued landscape for the purposes of Framework paragraph 49.

40. Although the Framework refers to valued landscapes it does not provide a definition of what type of landscape that might be. Framework paragraph 109 starts by reiterating the wider objective of enhancing the natural environment, which I take to mean the countryside in general and then it goes on to refer to valued landscapes, which must mean something more than just countryside in general. Case law<sup>13</sup> and Inspectors' decisions have identified that "valued" means something more than popular, such that a landscape was "valued" if it had physical attributes which took it out of the ordinary. In addition, the Guidelines for Landscape and Visual Impact Assessment (GLVIA3), provides at Box 5.1 a range of factors that can help in the identification of valued landscapes. These include landscape quality/condition; scenic quality; rarity, representativeness; conservation interests recreation value; perceptual aspects and associations. Whilst some of the factors go beyond the threshold identified by case law the Box 5.1 headings provide a useful context within which to assess "value". However, this is not a technical process and relies on subjective, albeit informed professional, judgement/experience.
41. Given the urbanising influence of built development on the northern eastern and southern boundaries and the generally overgrown nature of the site, I consider the landscape quality/condition of the site to be low/medium. For similar reasons, the site displays limited aesthetic appeal and it has low scenic value. Rarity and representativeness can be dealt with together. This is a landscape that does not contain rare landscape types or features. As such in terms of rarity and representativeness, I consider the value of the site/landscape to be low.
42. Given that the site has been neglected for some considerable time, the presence of the badger sett and the submissions regarding its ecology, it attracts a medium value for its conservation interest. There is no public access to the land other than it being a piece of a larger area of open land and has low recreational value and a medium value in terms of perceptual aspects. As far as I am aware the site /landscape has no cultural associations and as such attracts a low value. Reiterating again that this is not a technical exercise, drawing the Box 5.1 factors together, I consider the nature and value of the landscape of the appeal site to be ordinary/low. Combining this "score" with the case law requirement that the landscape should display physical attributes that takes it out of the ordinary, I conclude, that when looked at in the round the appeal site is not a Framework paragraph 109 valued landscape and does not benefit from the enhanced planning status that such an attribution would bring to the balancing exercise.
43. On this issue, the development would have a highly localised substantial and adverse impact on landscape character and visual impact. However, this impact would reduce with distance and for the most part in the wider area the landscape character and visual impact of the development would be

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<sup>13</sup> Stroud District Council v Secretary of State for Communities and Local Government [2015] EWHC 488 (Admin) & Cheshire East Borough Council v Secretary of State for communities and Local Government [2016] EWHC 694 (Admin).

minor moderate. That said the landscape and visual harm resulting from the development would conflict with CS Policies 14 and 17 and LP 2 Policy DSP6.

## **Other Considerations**

### Highways

44. I understand the concerns raised by residents particularly regarding the impact of traffic on congestion on the wider network and on Hatherley Crescent/Cornaway Lane at school dropping off/pick-up times. The planning application was accompanied by a robust Transport Assessment (TA) the scope of which was agreed with Hampshire County Council (HCC) as the Highway Authority (HA). In light of this study and its findings, the HA and the Ipa, subject to the imposition of appropriate planning conditions, have no objection to the proposal on highway safety or traffic generation grounds. I have no reason to disagree with those conclusions.
45. In terms of the impact on the wider area, the TA concludes that the capacity of junctions within the study area would not be significantly impacted upon and that the estimated marginal increases in queue lengths would not significantly impact on the operation of the highway network. Congestion occurring at school drop off and pick-up times is restricted to short periods of the day and occurs only on weekdays during term time. Given the location of the site directly abutting the school, the development would be unlikely to generate additional vehicular traffic to and from the school. In my experience, additional traffic generated by the development would only likely to have an impact during the short morning drop-off window. These impacts are not a reason to withhold permission.

### Ecology

46. The site is located some 350m from the Portsmouth Harbour Site of Special Scientific Interest (SSSI) which forms part of the wider Portsmouth Harbour Special Protection Area (SPA) and Ramsar Site. The appellant submitted ecological appraisals and produced an Ecological Construction and Management Plan. Given the proximity of the site to the national and internally designated sites referred to above, there is potential for the development to affect the interest features for which they were designated.
47. The appellant submitted to the Ipa a Habitat Regulations Assessment (HRA), which has been assessed by Natural England (NE). Based on what I consider to be a robust study, the HRA concludes that, having regard to measures that could be built-into the scheme and a financial contribution to the Solent Recreation and Mitigation Partnership, significant effects are unlikely to occur either alone or in combination on the interest features of the SPA and Ramsar. In light of these finding, and similar to the conclusion reached by NE, I conclude that an appropriate assessment under the regulations<sup>14</sup> is not required. Similarly, subject to the development being carried out in accordance with the details submitted with the application, NE indicates that the development would not damage or destroy the interest features for which the Portsmouth Harbour SSSI has been notified. Again, I have no reason to disagree with that conclusion.

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<sup>14</sup> The Conservation of Habitats and Species Regulations 2010 (As Amended).

48. There is an active badger sett within the site, which the appellant proposes to relocate within the area of public open space to the west. Badgers and their setts are protected by legislation<sup>15</sup>. Whilst the lpa has no objection to the relocation, the developer would require a separate licence from NE to remove the badgers. Whilst I note the concerns raised regarding the efficacy of artificial badger setts, they are, in my experience, in common usage and successful. I have no reason in this case to conclude there would be unacceptable harm or loss.
49. From the representations made both orally and in writing, I am in no doubt that the appeal site is highly regarded by local residents and the adjacent primary school as an ecological resource. The school's activities in introducing its pupils to the natural world are substantial and nationally recognised. Although the appeal site is privately owned and there is no public access to it, I recognise that the school views the site as a resource and an indirect source for the wildlife that inhabits the school site. Clearly whilst there would be some loss of habitat, this relates to many species that are common and widespread. The proposed area of public open space albeit it would be divorced from the school grounds by a housing estate, would be publicly available and could be laid out and managed as an improved ecological resource. Moreover, the tending and maturing of private gardens does provide a range of diverse habitats for a wide range of species. Whilst not a direct replacement the variety of habitats provided by private gardens would mitigate any impact on local ecology.
50. Drawing all of the above together, I conclude that the proposed development would not have a materially unacceptable effect on local ecology.

#### Education and Health

51. The development would generate a demand for 31 primary school places and 22 secondary school places. Research by the appellant identifies that the 5 infant/junior schools in Portchester are full. The Northern Infant school has recently been expanded and the Northern Junior School has a proposal to expand in 2019. HCC as the local education authority (LEA) indicates that the local secondary school has spaces available to meet the needs of the development. Whilst there is pressure on local primary schools, the appellant's submission that some of the existing school places are taken up by pupils from out of the school planning area, which could be used by local children, is not disputed by the lpa. There is no objection from the lpa or LEA on the grounds that the proposal would result in unacceptable pressure on local education infrastructure. I have no reason to disagree.
52. Evidence submitted by the appellant indicates that all primary healthcare centres within some 2 miles of the site are currently accepting patients. Whilst there were submissions that appointments are not easy to obtain, this is not a local problem and is something that occurs nationwide. There is no objection from the local providing body for primary care or the lpa.

#### Benefits

53. The proposed development would deliver economic, social and environmental benefits. Chief amongst these are that the proposal would

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<sup>15</sup> Protection of Badgers Act 1992.

deliver up to 120 homes including up to 48 affordable units. Economic benefits that would flow from the application include those arising from employment during the development phase; a New Homes Bonus payment and increased Council Tax revenues. When undertaking the planning balance factors such as these are generally held to be benefits of development albeit they are benefits that would occur from most developments.

#### S106 Undertaking

54. Framework paragraph 204 and CIL Regulation 122 say that Planning Obligations should only be sought and weight attached to their provisions where they meet all of the following tests. These are: they are necessary to make the development acceptable in planning terms; they are directly related to the development; and they are fairly and reasonably related in scale and kind to the development.
55. NE's lack of objection to the development is based on the developer making a contribution to the implementation of the Solent Recreation Mitigation Scheme. The purpose of the contribution is to mitigate disturbance of the Portsmouth Harbour SSSI and the wider Portsmouth Harbour Special SPA and Ramsar Site. The UU provides a mechanism for the provision of affordable housing required by development plan policy and the provision and retention of the public open space. These obligations are necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, in this respect, the UU is consistent with the guidance at Framework paragraph 204 and Regulations 122 of the CIL Regulations and where appropriate, I have attached weight to them in coming to my conclusion
56. The UU provides for (i) the submission of a Full Travel Plan; (ii) the payment of £5,750 to Hampshire County Council made up of £750 towards the cost of approving a Full Travel Plan and £5,000 to monitor compliance with it; (iii) the appointment of a Travel Plan Coordinator and (iv) a Travel Plan Bond.
57. The submission of a Travel Plan is a matter that could be dealt with by the imposition of an appropriate condition. Here, the only explanation I have for the monitoring fees is that *"it has been assessed based on the highway authority's experience with regards to monitoring such developments and is justified to ensure that the modal targets within the Travel Plan area achieved and if not there are "punitive" measures within the travel plan that can be instigated to endeavour to achieve the desired modal targets. The monitoring process ensures this check."*
58. The test contained within the Framework and CIL Regulation 122 i.e. "necessary to make the development acceptable in planning terms" is a high threshold in that the obligation has to be necessary and not merely desirable. Moreover, there is nothing in the Planning Acts, the CIL Regulations, the Framework or PPG that suggest that an authority could or should claim monitoring fees as part of a planning obligation. The monitoring of the Travel Plan is, in my view, one of the functions of the County Council. Despite my request for supporting evidence, I conclude that

in the absence of a full justification supported by evidence<sup>16</sup> the payment of a monitoring fee and the provision of a Travel Plan Bond are unnecessary to make the development acceptable in planning terms nor am I in a position to conclude that the requested contribution and Bond are fair and reasonably related in scale and kind to the development. For these reasons, I consider the requested contribution does not accord with the tests set out in the Framework and CIL Regulation 122 and I have not taken it into account in coming to my decision.

### **The Planning Balance**

59. The starting point is that S38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 requires that decisions on applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
60. The site is located outside the settlement boundary of Portchester and does not fall within any of the categories of development that may be permitted by LP Policy DSP6; as such the proposal is in conflict with this policy. Both parties refer to CS Policy CS11, which refers to development within the settlement boundaries of Portchester being permitted. Given the specific nature of this policy and the location of the site outside the settlement boundary, I consider this policy is not relevant to the overall planning balance. I have concluded that the proposed development would have an adverse impact on landscape character and a substantial adverse visual amenity albeit that impact would be highly localised. As such the proposal would be in conflict with CS Policies CS14 and CS17. The proposal would result in the loss of B&MV and would be in conflict with CS Policy CS16.
61. Paragraph 2 of the Framework confirms that it is a material consideration in planning decisions. The fourth bullet point of Framework paragraph 14 has 2 limbs. The first limb indicates that where the development plan is absent, silent or relevant policies are out-of-date planning permission should be granted unless 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. The second limb indicates that development proposals should be granted unless or specific policies in the Framework indicate development should be restricted. Framework paragraph 49 says that relevant policies for the supply of housing should not be considered up-to-date, if the lpa cannot show a 5-year supply of deliverable housing sites. Framework paragraph 215 indicates that due weight should be given to relevant policies in existing plans according to their consistency with the Framework.
62. In relation to housing land supply, the lpa cannot demonstrate a 5-year supply of deliverable housing sites. In this context, the decision of the Supreme Court<sup>17</sup> indicates that such a shortfall triggers the fourth bullet point of Framework paragraph 14. In this case, based on the evidence before me it is only the first limb of the fourth bullet point that is engaged.

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<sup>16</sup> Planning Policy Guidance, Paragraph: 004 Reference ID: 23b-004-20150326.

<sup>17</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin) .

The appellant and the Ipa agree that CS Policy CS14 and LP 2 Policy DSP6 are not relevant policies for the supply of housing and I have no reason to disagree. Given, the nature of CS Policy CS 17 – first bullet point, I consider this is not a relevant policy for the supply of housing either.

63. Based on the evidence before me the housing land supply stands at just over 2-years resulting in a significant shortfall. I acknowledge that the Ipa is seeking to address its ongoing housing requirements through the preparation of the Local Plan Review and the promotion of the sustainable Urban Extension at Welbourne. That said, a consultation draft of the Local Plan Review is not anticipated to be published until September 2017 and I would not expect that plan to be adopted before mid-2018 at the earliest. Welbourne is the subject of an adopted LP and will be progressed through the appointment of a development partner who will not be identified until early 2018. Once identified the Ipa/development partner will subsequently need to involve themselves in land acquisition through negotiation and/or compulsory purchase and to submit/determine major planning applications. On all the evidence before me, it appears to me, given the scale of the development and the constraints involved, which include the provision of a new junction on the M27 (albeit up to 500 units may be permitted before the new junction is required), the potential for significant development within the 5-year period is limited. In these circumstances, the material shortfall in housing land supply will continue and the backlog of housing required to meet local needs will grow.
64. As far as I am aware there are no constraints that would delay this development and as such granting permission would, in line with the clear objectives spelt out at Framework paragraph 47, provide for a significant and material boost/contribution to meeting housing needs within the District, particularly affordable housing. Drawing all this together, I consider that the contribution the appeal site could make to meeting the District's housing needs attracts very substantial weight in the planning balance.
65. Whilst, the objectives of CS Policy C14, CS 17 and LP 2 Policy DSP6 in seeking to protect the countryside from development are consistent with the fifth Core Principle identified at Framework paragraph 17, I conclude in this case that the limited harm in terms of the loss of B&MV agricultural land and landscape character and visual impact would not significantly and demonstrably outweigh the benefits of this scheme in making a material contribution to the significant shortfall in housing land. Accordingly, having regard to Framework paragraph 14, I consider the proposed development represents sustainable development.
66. In coming to the above conclusion, I have had regard to the appeal decision issued by the Secretary of State in 2006. However, I consider this decision was issued in the context of a materially different development plan context. Then, although located in countryside, the area was also identified in the development plan as a Local Gap and a Coastal Zone. Here local policy indicated that development that would physically or visually diminish undeveloped land within the gap would not be permitted. Now, although still defined for planning purposes as countryside, the open area to the west and south of the built-up area of Portchester is no longer classed as a Local Gap or within the Coastal Zone.

67. For the reasons, given above and having regard to all other considerations, I conclude that the appeal should be allowed.

### **Planning Conditions**

68. For the avoidance of doubt and in the interests of proper planning and I have imposed a condition relating to the specification of plans (4)<sup>18</sup>. Conditions relating the submission of details and the implementation of approved schemes in relation to: the construction of the estate roads (6); boundary treatment (7); archaeological investigations (8); foul and surface water drainage (9); an arboricultural assessment (10); existing and finished ground level and finished floor levels (11); the prevention of mud on the highway (12) construction traffic access (13) and the submission of a Travel Plan (14) are reasonable and necessary in the interests of the appearance of the area, highway safety, the identification and preservation of potential archaeology and the protection neighbours' living conditions. Conditions relating the prevention of fires (15), hours of operation (16); the treatment of hard surfaces (17) and a restriction on eaves height (20) are reasonable and necessary in the interests of appearance and neighbours' living conditions. In the interests of the appearance of the area, a condition relating to landscape implementation and maintenance (18) is necessary. In the interests of ecology, a condition requiring the development to be carried out in accordance with the submitted Ecological Construction and Management Plan (19) is necessary. Where necessary and in the interests of precision and enforceability I have reworded the suggested conditions.
69. At the inquiry, the lpa and the appellant agreed that the suggested conditions relating to boundary treatment, access details, external lighting/floodlighting and the insertion of roof lights were matters that were covered by the submitted plans, were unnecessary , duplicated other conditions or were matters that could be dealt with as part of the reserved matters submissions. I have not imposed these conditions.

*George Baird*  
Inspector

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<sup>18</sup> Numbers relate to those in the Schedule of Conditions.

## **Annex A**

### **SCHEDULE OF CONDITIONS**

1. Details of the appearance, scale, layout and landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
4. The development shall be carried out in accordance with the following approved drawings: Location Plan - Drawing 6132 LOC Rev D and J-D1708.00 Site access Layout and Highway Improvements.
5. No housing development including gardens and roads shall take place to the west of the hedgerow running north to south through the site as shown on Drawing No. 01 Rev W- Illustrative Site Plan.
6. No development shall commence until details of the width, alignment, gradient and type of construction proposed for any roads, footways and/or access/accesses, to include all relevant horizontal and longitudinal cross sections showing the existing and proposed ground levels, together with details of street lighting (where appropriate), the method of disposing of surface water, and details of a programme for the making up of roads and footways have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
7. No development shall commence until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwellings are first occupied or in accordance with a timetable agreed in writing with the local planning authority and shall thereafter be retained at all times.
8. No development shall commence until a preliminary archaeological survey establishing the location, extent, nature and significance of archaeological remains on the site including a mitigation strategy, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the agreed mitigation strategy.
9. No development shall commence on site until details of sewerage and surface water drainage works to serve the development hereby permitted have been submitted to and approved in writing by the local planning authority. None of the dwellings shall be occupied until the drainage works have been completed in accordance with the approved details.
10. No development shall commence until an Arboricultural Impact Assessment Report and Method Statement for tree/hedgerow protection has been

- submitted to and approved in writing by the local planning authority and the approved scheme implemented. The tree/hedgerow protection shall be retained throughout the development period until such time as all equipment, machinery and surplus materials have been removed from the site.
11. No development shall commence until details of the internal finished floor levels of all of the proposed buildings in relation to the existing and finished ground levels on the site and the adjacent land have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  12. No development shall commence until details of the measures to be taken to prevent spoil and mud being deposited on the public highway by vehicles leaving the site during the construction works have been submitted to and approved in writing by the local planning authority. The approved measures shall be fully implemented upon the commencement of development and shall be retained for the duration of construction of the development.
  13. No development shall commence until the local planning authority have approved details of how construction traffic will access the site, how provision is to be made on site for the parking and turning of operatives and delivery vehicles and the areas to be used for the storage of building materials, plant, excavated materials and huts associated with the implementation of the permitted development. The areas and facilities approved in pursuance to this condition shall be made available before construction works commence on site shall thereafter be kept available at all times during the construction period, unless otherwise agreed in writing with the local planning authority.
  14. Prior to the commencement of construction works a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall include arrangements for monitoring and effective enforcement. Development shall be carried out in accordance with the approved details.
  15. No materials obtained from site clearance or from construction works shall be burnt on the site.
  16. No work relating to the construction of any of the development hereby permitted (including works of demolition or preparation prior to operations) shall take place before the hours of 0800 or after 1800 hours Monday to Friday, before the hours of 0800 or after 1300 hours on Saturdays or at all on Sundays or recognised public holidays, unless otherwise first agreed in writing with the local planning authority.
  17. No development shall proceed beyond damp proof course level until details of the finished treatment of all areas to be hard surfaced have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and the hard surfaced areas subsequently retained as constructed.
  18. The landscaping scheme submitted under Condition 1 above, shall be implemented within the first planting season following the commencement of the development or as otherwise agreed in writing with the local planning

authority and shall be maintained in accordance with the agreed schedule. Any trees or plants which, within a period of 5 years from first planting, are removed die or become seriously damaged or defective, shall be replaced, within the next available planting season, with others of the same species, size and number as originally approved.

19. The development shall be carried out strictly in accordance with the Ecological Construction and Management Plan dated August 2016 and updated November 2016.
20. The dwellings shall not exceed two-storey eaves height.

## **ANNEX B**

### **APPEARANCES**

#### FOR THE APPELLANT

Christopher Boyle QC, instructed by the Bryan Jezepeh Consultancy.

He called:

Steven Brown BSc (Hons) Dip TP, MRTPI  
Woolf Bond Planning.

Liz Bryant MA, CMLI  
Allen Pyke Associates.

Michael Knappett BSc (Hons), BTP, MRTPI.  
Bryan Jezepeh Consultancy.

#### FOR THE LOCAL PLANNING AUTHORITY

Paul Stinchcombe QC, instructed by Fareham Borough Council

He called:

Andy Blaxland  
Director, Adams Hendry Consulting Limited.

Nicola Brown BA (Hons), BLand Arch, CertUD, CMLI  
Director, Huskisson Brown.

#### INTERESTED PERSONS

Mr Mullen.  
Mrs Fox.  
Ms Sawyer.  
Mr Woodman Portchester Civic Society.  
Cllr Price.  
Cllr Walker.  
Cllr Bell.  
Cllr Fazackarley.  
Cllr Cunningham.  
Ms Morton, Wicor Primary School.  
Mr Cable.  
Mr Britton.  
Mrs Kirk.

#### DOCUMENTS SUBMITTED AT THE INQUIRY

- Doc 1 - Phides Estates (Overseas) Limited and Secretary of State for Communities and Local Government and Shepway Council and David Plumstead [2015] EWHC 827 (Admin).
- Doc 2 - Supplementary Tables AB1, AB2 & AB3 to the evidence of Mr Blaxland.

- Doc 3 - Additional Suggested Condition – Field A.
- Doc 4 - Note in response to question from Mr Boyle.
- Doc 5 - Submissions by Cllr Walker.
- Doc 6 - Submissions by Cllr. Price.
- Doc 7 - Submissions by Cllr. Bell.
- Doc 8 - Submissions by Cllr Fazackarley.
- Doc 9 - Submissions by Cllr Cunningham.
- Doc 10 - Submissions by Portchester Civic Society.
- Doc 11 - Submissions by Mr Cable.
- Doc 12 - Submissions by Wicor Primary School.
- Doc 13 - Submissions by Mrs Kirk.
- Doc 14 - Summary of S106 Unilateral Undertaking.
- Doc 15 - Lpa CIL Compliance Schedule.
- Doc 16 - Email dated 27 April 2017, Response by Hampshire County Council regarding S106 Unilateral Undertaking Travel Plan Contributions.
- Doc 17 - S106 Unilateral Undertaking.
- Doc 18 - Minutes of Planning Committee 24 March 2016.
- Doc 19 - Appellant’s application for coasts.
- Doc 20 - Lpa response to the application for costs.

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED

- Doc 21 - Appellant’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).
- Doc 22 - Lpa’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).



## Appeal Decision

Hearing Held on 14 and 15 August 2018

Site visit made on 15 August 2018

**by Kenneth Stone BSc Hons DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 10<sup>th</sup> September 2018**

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**Appeal Ref: APP/A1720/W/17/3192431**

**Sawmills Industrial Park, Wickham Road, Fareham, Hampshire PO17 5BT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by BST Warehouses Ltd against Fareham Borough Council.
  - The application Ref P/17/0189/FP, is dated 17 February 2017.
  - The development proposed is described as 'demolition, site clearance and remediation with the erection of 72 C3 residential dwellings and associated access, parking, ancillary infrastructure and landscaping works'.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing applications for costs were made by BST Warehouses Ltd against Fareham Borough Council and by Fareham Borough Council against BST Warehouses Ltd. These applications are the subject of separate decisions.

### Procedural matters

3. Prior to validation the planning application was the subject of a screening direction issued by the Secretary of State for the Department for Communities and Local Government. The screening direction concluded that the proposed development was not EIA development.
4. The Council's Planning Committee considered the application following the appeal being lodged and resolved that had it had the opportunity to determine the application it would have refused permission for six reasons. Those putative reasons included reference to inadequate information in relation to land contamination, inadequate survey information in respect of protected species and the absence of a planning obligation. During the appeal and prior to the conclusion of the hearing further information was submitted to address issues related to land contamination and protected species and a Unilateral Undertaking (UU) planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 was executed and submitted. On this basis the Council confirmed it did not seek to pursue the reasons for refusal related to those matters. I address the planning obligations and matters arising out of that further information below. The sixth reason for refusal, related to highway

- matters, was not pursued by the Council following further information and discussion with the Highway Authority.
5. The remaining substantive issues between the parties related to the design quality of the scheme and the adequacy of infrastructure provision and these form the basis of the main issues set out below.
  6. The Solent is internationally important for its wildlife and three Special Protection Areas (SPAs) have been designated to protect over wintering birds. The Solent Recreational Mitigation Strategy (SRMS) requires contributions from all dwellings built within 5.6 Km of the boundaries of the SPA. The appeal site is located within the 5.6 Km zone of influence of the Solent SPAs and it is not disputed that a contribution is required and indeed such a contribution is secured in the UU.
  7. However, following the Court of Justice of the European Union judgement in the *People over Wind and Peter Sweetman v Coillte Teoranta*, case C-323/17 it is not permissible to take account of measures intended to avoid or reduce harmful effects of the plan or project on a European site at the screening stage under the Habitat Regulations Assessment. The proposed development is not directly connected with or necessary for the management of the Solent SPAs. Given the agreement between the parties that a contribution under the SRMS is required it is accepted and acknowledged that there would be a potential for the proposal to have a significant effect on the interest features of the site through the increased pressure resultant from an increase in the population resulting in increased visitor numbers with the potential for increased disturbance of the over wintering birds. Whilst the SRMS has been developed to mitigate such impacts given the recent judgement of the CJEU this cannot be taken into account at the screening stage and therefore it must be concluded that it is likely the proposal would have a significant effect, either alone or in combination with other developments, through the increased recreational pressure.
  8. The outcome of that conclusion is that an appropriate assessment must be carried out to determine whether or not the development would have an adverse effect on the integrity of the European site. But again given the justification for the required mitigation this is on the basis that there would be a significant effect that requires to be mitigated. The appropriate assessment therefore results in a conclusion that there is a risk of adverse effects on the integrity of the site. However, the HRA process then seeks to consider whether the adverse effects can be mitigated. In this regard there is a published mitigation strategy which has been agreed by various bodies including Natural England, the Statutory Nature Conservation Body. The appellant has provided a UU planning obligation which, among other matters, secures the payment of the required contribution to meet the SRMS and would therefore adequately mitigate the adverse effects that would result from additional recreational pressure on the integrity of the SPAs. There is therefore no bar to development on this basis.
  9. The National Planning Policy Framework at paragraph 177 advises that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined. Given this proposal has

been the subject of appropriate assessment this has implications for the approach to decision making which I return to below in the planning balance.

## **Main Issues**

10. The main issues in this appeal are:

- Whether the proposed development would represent high quality design and contribute towards an attractive, inclusive, safe, well-connected and sustainable community as required by development plan and national policy; and
- Whether the proposed development makes adequate provision for a reasonable proportion of the necessary infrastructure required to support Welborne.

## **Reasons**

### *Background*

11. The statutory development plan for the area comprises the Local Plan Part 1: Core Strategy (CS), the Local Plan Part 2: Development Sites and Policies (DSP) and the Local Plan Part 3: The Welborne Plan (WP). In respect of this appeal the CS and the WP provide the relevant development plan policy framework against which to consider the development.
12. Policy CS13 of the CS provides for a Strategic Development Area north of Fareham to provide for housing and supporting environmental, social and physical infrastructure along with retail and employment floorspace. The aim is for the new community to be as self-contained as possible whilst complementing and supporting the established town centre of Fareham. The policy also sets out high level development principles for the new development.
13. The WP takes forward the strategic development area allocation and sets out the broad type, location, amount and character of the development of Welborne and is provided to guide decision making on future planning applications for the site. The Welborne Design Guidance (WDG) is a supplementary planning document to explain the Council's expectations in the design of Welborne. It builds on policies in the WP and aims to ensure Welborne will be a well-designed development that fits in with the landscape and provides a high quality place to live.
14. Both parties refer to the strategic allocation as a garden village and I understand that Welborne has been identified by the government as a Garden Village which will provide priority access to funding streams and support to assist in progressing the delivery of the 6, 000 homes on the site and the supporting infrastructure.
15. There is an outstanding application under consideration by the Council by Buckland Development Ltd for development of the strategic allocation.
16. The Statement of Common ground accepts that the proposed delivery of housing on the appeal site in advance of the outline planning permission being granted for the wider Welborne Area would, in this case be acceptable and would not prevent the delivery of the overall vision for Welborne and as such is acceptable in principle and as a standalone phase from the wider Welborne project. The proposal, for residential development for the site, is in accordance

with the Strategic Framework Diagram referenced in para 3.50 of the WP which identifies the site for residential development.

17. The appeal site is an existing industrial site occupied by various industrial buildings with the majority of the site laid to open hard standing. It is presently in a relatively low intensity use. There are changes in levels across the site with the eastern boundary of the site, adjacent the A32, being higher than the western boundary, formed by Forest Lane and the southern end of the site, adjacent to existing residential development, being lower than the fields and open countryside that rise to the north of the site.

### *Quality of Design*

18. The National Planning Policy Framework at paragraph 124 clearly advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve and that good design is a key aspect of sustainable development. At paragraph 127 the Framework further advises that decisions should ensure developments will function well, be visually attractive, sympathetic to local character, establish a strong sense of place and optimise the potential of the site to accommodate an appropriate amount and mix of development. Paragraph 130 is clear that account should be taken of local design standards or style guides or supplementary planning documents in reaching conclusions on the design of a scheme, with poor design being refused but design not used by decision makers to object to development if it accords with the expectations of policies.
19. The context within which this development is to come forward is as an early phase of the Welborne Garden Village. It may be seen not to prejudice the wider implementation and delivery of the Garden Village but it is still part of the wider allocation and obtains its in principle acceptance as part of the strategic allocation. The scheme must be considered in the context of the planning framework for Welborne, the strategic allocation, development management policies in the Welborne Plan and, as a material consideration to provide further advice and guidance on those policies, the Welborne Design Guide. The success of the project will for a significant part be dependent on the implementation of a high quality design. As the first proposals to be determined in that context it is imperative the aims and aspirations for the Garden Village are fully realised in all its constituent parts.
20. The overall design considerations of the scheme have a number of facets that interact and contribute to the character and layout of the scheme, including the arrangement of buildings, open space provision, the scale and bulk of buildings, parking areas and the communal garden area.
21. Policy WEL2 in the WP supersedes the high level development principles for Welborne as originally set out in CS13. These include a requirement for each phase to be well designed and incorporate a range of densities and building heights to create a series of attractive places with different and distinctive characters. The WP identifies four character areas including a Woodland Character Area at Figure 4.1. The WDG provides further advice on the expectations and division of the character in these character areas. The appeal site would be located within the 'Woodland Character Area'. In advising on the character of Welborne as a whole the WDG at 2.33 advises that the more sensitive areas of the development are those on the outskirts of the site. In these locations it is suggested development would be expected to be less

- intensive and pre-dominantly 2-storey. Page 34 includes design guidance for the Woodland Character Area and indicates residential development should be predominantly 2 storey with occasional 2.5 storey pre dominantly detached and semi-detached with occasional short terraces and a mix of setbacks. The Woodland Character Area should be characterised by tree cover that is a dominant feature of the area, a layout that ensures surrounding woodland is visible from within the site and in particular locations be of a more rural character.
22. The appeal proposals are predominantly formed of short blocks of closely spaced terraces set in formal arrangements and with building heights that incorporate a significant proportion of building heights in excess of 2 storeys. The resultant layout, form and character is one of a more urban or suburban residential estate. The limited separation of spaces between a number of the terraces result in longer runs of building frontages dominating the spaces. The Crescent terrace to the south of the site and the group of housing enclosing the SUDs space to the north form distinctly urban typologies. Similarly the main housing group fronting the large open space with narrow plots and higher building heights, including up to three storeys, dominate the centre of the scheme and produce a very civic appearance.
  23. There is an east west pedestrian route through the site which could link to the wider Welborne development and form part of the Green corridor and infrastructure required in the WP. The relationship of this with the large open area in the centre of the site contributes to a strong element of green infrastructure. However, its effectiveness is reduced to some extent by the subdivision from the SUDs area to the north and the children's play area and the constrained access points onto Wickham Road and Forest lane.
  24. The large open space and the green route that runs through the site provide the potential for tree planting but given the limited other spaces and dominance of the road through the scheme this would not result in a Woodland Character where tree cover was a dominant feature. The nature of the road alignment and positioning of the blocks would restrict views to the wider areas beyond the site and reduce views to the woodlands beyond to glimpsed views rather than integrated within the overall design and contributing to the importance of woodland in those views.
  25. In my view this conflicts with the Councils expectation for the area which would suggest lower intensity development in a more informal layout with a more rural character and could undermine WEL2 which seeks to ensure that development creates a series of attractive places with different and distinctive characters.
  26. There are a number of locations where the layout provides flank walls and garden boundaries onto roads conflicting with the advice in the WDG and providing for poor or reduced surveillance of these sections of the site.
  27. The northern section of the site is particularly unsuccessful in seeking to address the issues raised by the site. Whilst I acknowledge that the WDG seeks to promote perimeter block development it does not require only such a form of development and that would be inappropriate. This site is constrained is previously developed has significant variations in levels and other factors which may suggest that such an approach is not the only solution. However, many of the principles behind the perimeter block approach including natural

surveillance, defensible space, the separation and definition of public and private spaces are important concepts to retain. With the use of the parking courts many of these respected principles are lost. Much of the parking areas in these locations are poorly over looked are not readily distinguishable as private or public spaces or provide clear demarcation of ownership. They are poorly screened and are somewhat unrelieved unattractive large areas of hardstanding. Whilst it was suggested additional windows could be inserted in the flank walls of properties fronting these spaces to increase overlooking that does not address the basic issue. These windows would in any case at best be secondary windows or not to primary habitable rooms which would do little to improve passive surveillance of the parking areas.

28. These would conflict with WEL6 which requires development, amongst other matters, to provide a layout and design that will help to create safe well-connected neighbourhoods.
29. The small block of flats located at the entrance to the development appears shoehorned into this section of the site and has limited space for its setting or to provide amenity space for future occupiers of the building. The limited space to the building, the scale of the elevations and the proximity of tree planting would result in the southern space being unwelcoming and unattractive as a private amenity space for future occupiers.
30. The general appearance of the entrance to the site is somewhat compromised by the level of activity, limited space around the flat block, the additional private access for the four detached properties combining to produce an intensity of built form and level of activity that contributes to a more urban character for the scheme.
31. Bringing all these matters together I conclude that the proposed development would result in a development with a strong urban character conflicting with the more woodland character area proposed and the generally more informal and lower intensity of development rural character sought for this part of Welborne. This would result in a development which would compromise the expectations for the character and appearance of the area. The layout and design introduces elements that produce areas where surveillance would be poor and amenity provision for future residents was unacceptably constrained. On this basis the proposed development would not represent high quality design and would not contribute towards an attractive, inclusive, safe, well-connected and sustainable community as required by development plan and national policy.

#### *Necessary infrastructure*

32. Welborne as a new settlement which is aiming for the most part to be self-sufficient has been justified and evidenced on the basis of a delivery plan and assessment of the necessary infrastructure it will require to meet its needs. The WP is supported by an Infrastructure Delivery Plan and the extant application for the wider Welborne development is accompanied by an updated Infrastructure delivery plan.
33. The applicant has not submitted such a plan with their application albeit that such documentation is suggested to be appropriate in the WP. The Council have validated the application on the back of the applicant providing a note

- summarising how the development would contribute to the wider infrastructure costs for Welborne and a further note on these matters.
34. It was accepted at the hearing that the Council do not object to the specific costings the appellant has put forward as they have no evidence to challenge those.
  35. I also note that the appellant has drawn attention to the fact there is sufficient capacity in the local primary and secondary schools to meet the demands of the development and that there was sufficient capacity in the local doctors surgeries and dentists.
  36. However the principle of the development is predicated on the site forming part of the wider Welborne development and that as the new Garden Village develops there would be an expectation that the occupants of this development would use the services and facilities in the wider Welborne development and not travel to other areas. It is not unreasonable to expect all parts of the Welborne strategic allocation to make its proportionate contribution to the provision of the necessary infrastructure to support Welborne's future residents.
  37. The appeal site is a previously developed area of industrial land and will require significant decontamination. The decontamination costs form a significant portion of the costs in the appellants note to demonstrate that these are part of their contribution to the necessary infrastructure. However I have no evidence or clarity before me on whether the decontamination costs formed part of the wider Welborne IDP costs and whether the appellant's costs are of a similar scale. Similarly I have no indication as to whether by the appellant decontaminating this site that would reduce, or by how much, the cost that would be borne by the wider Welborne development. In these circumstances there is no clarity on whether there is cross subsidy such that would then justify reductions in other contributions.
  38. I note that the high costs of the development ascribed by the appellant but these appear in many instances to be the normal costs associated with a development of a previously developed site to a standard required by development plan policy. Whilst I acknowledge the higher per unit costs towards these matters as compared to the IDP costs divided across the wider Welborne development that does not address the issue. The evidence before me demonstrates that the appellant does not contribute towards infrastructure of schools, primary health care, extra care housing, community buildings, market square public realm sports facilities etc; indeed all of the social and services necessary to support a thriving community. What the costs provided show are costs associated with decontamination, the provision of green infrastructure, transport, and physical energy and drainage projects. But these are all necessary costs of the development.
  39. Overall, on the basis of the above, I conclude that the development does not make adequate provision for a reasonable proportion of the necessary infrastructure required to support Welborne. The proposal would therefore conflict with policy WEL41 which requires development to be undertaken in accordance with an agreed delivery plan unless there is suitable alternative appropriate infrastructure to adequately service the development.

## **Planning Obligations**

40. The appellant has secured planning obligations through a Unilateral Undertaking under sec 106 of the Town and Country Planning Act 1990. The UU contains six schedules which set out the obligations the owner undertakes to observe and perform.
41. Schedule one contains obligations related to highway works and a travel plan. These ensure that the highway works will be undertaken at the appropriate stage of development and follow the appropriate mechanisms. The travel plan will encourage sustainable travel. These matters are in accordance with policies WEL23 and WEL27 in the WP and are directly related to the development and fairly and reasonably related to the scale of the development.
42. Schedule 2 contains obligations which secure the provision of 22 affordable housing units, 15 as affordable rent and 7 as shared ownership. The obligations address issues including transfer, delivery, stair casing and release. Three wheelchair units are also secured. The provision of 30% of the units as affordable units is in accordance with policy WEL18 of the WP and is therefore fairly and reasonably related in scale and kind to the development.
43. Schedule 3 secures the provision and management of the open space and play area. These are consistent with the requirements of policies WEL29 and WEL35 of the WP and are fairly and reasonably related to the scale and kind of the development.
44. Schedule four secures the financial contribution required for the SRMS. The contributions are not used for the provision of infrastructure and so are not caught by the pooling restrictions under the Community Infrastructure Levy Regulations. The SRMS contributions support the management of the SPAs to mitigate the harmful impact of additional recreational activity on nesting birds/wading birds within the Solent region. The contributions are therefore fairly and reasonably related in scale and kind to the development.
45. Schedule 5 secures public access to the onsite routes to support the wider Welborne development and ensure access to the green corridors and general access through the wider allocation development as it comes forward. The provisions are therefore reasonably and fairly related to the scale and kind of the development.
46. Finally schedule 6 secures the provision and implementation of an Employment and Skills Plan in accordance with policy WEL43 to provide opportunities for local people to be involved in employment and training during construction. This directly relates to the implementation of the development and in part is directed towards the social dimension of sustainable development. The obligation is fairly and reasonable related to the scale and kind of the development.

## **Benefits of the Scheme**

47. The proposed development would provide for some 72 new dwellings in an Authority where the Council accept that it can only provide for between 3.5 years and 4 years of housing land supply. The houses would come forward now and be an early housing opportunity and first delivery from the Welborne allocation which will contribute to the Council's housing delivery target. This is a significant benefit but given the limited number of units I reduce the overall

weight of this factor and afford it moderate weight. Of those new houses the development would make provision for 15 affordable units, secured through the UU. The Council has a significant need for affordable housing but given the limited number of units provided, which is also no more than policy requires, I also attach moderate weight to this benefit.

48. The appellant suggests the remediation of the site is a key benefit of the scheme. Whilst the old industrial, somewhat dilapidated buildings, hard surfacing and previously developed land would be removed and the site brought into a more productive use this would be the case in any redevelopment of the site. On this basis I give this only limited positive weight as a benefit of the scheme.
49. The scheme would result in the moving of the main access on the A32 and removal of any vehicular access through the site between the A32 and Forest Lane. These are matters that would improve highway safety and are minor benefits of the scheme. Again they could be secured with any redevelopment of the site. I afford this limited positive weight.
50. The site would make provision for connection to the foul drainage network which could facilitate surrounding properties also connecting to the foul drainage system reducing the reliance on soakaways. This is a minor benefit of the scheme to which I attributed limited positive weight.
51. The appellant suggests that positive benefit derives from the landscaping and green infrastructure provided on the site. However, this is a necessary requirement to meet policy and ensure the development provides a good standard of amenity for future residents', to protect adjoining occupiers and addresses ecological requirements. It is also necessary to address the woodland character area within which it is proposed. It is not therefore a positive benefit of the scheme.
52. Adjoining the site is Mill House, a grade II listed building. The proposed development would remove existing large industrial structures close to the boundary and improve the setting of the listed building. This is a positive benefit to which I attribute moderate positive weight.
53. Any mitigation measures provided or secured in respect of the scheme are not positive benefits but seek to address and mitigate the impact of the development.
54. There would be economic benefits associated with the development including new homes bonus, CiL payments for which the development would be liable, the additional spend in the local economy during implementation of the development and the additional financial and community support derived from the increased population using services and facilities in the area once the development is occupied. I give this moderate positive weight.

### **Other matters**

55. The Council following the publication of the new Framework have confirmed that their supply of available housing land would be in the range of 3.5 to 4 years supply. The appellant accept that this is a reasonable range for the authority at this point in time. The Council cannot therefore demonstrate a 5 year supply of housing land.

56. The development would remove the existing buildings and hard surfacing from the land and de-contaminate the site. The Council originally provided a putative reason for refusal in respect of land contamination however upon receipt of further information have not continued with any objections to the scheme on that basis. The Council is satisfied that should permission be forthcoming land contamination could satisfactorily be addressed by condition and I have no evidence before me to disagree with those conclusions.
57. Similarly further information including further survey work and a mitigation strategy to address any concerns that may arise in respect of Dormice has been provided. Agreement has been reached between the parties that the most appropriate way forward is to accept that there is a strong likelihood that Dormice are on the site. On this basis the appellant has produce a Dormice mitigation strategy in the event it is demonstrated that they are. The Council, and County Council ecologist, accept that the mitigation strategy would address the effects of the development on Dormice if they were to be identified. On this basis a condition requiring the implementation of the Dormice mitigation strategy in the event Dormice were established to be on the site would be an appropriate way forward.

### **Planning Balance**

58. Given that the development has been subject to appropriate assessment the presumption in favour of sustainable development at paragraph 11 of the Framework does not apply. The proposal is therefore only to be considered on the basis of the section 38(6) balance such that the appeal should be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case I have concluded that the proposal would not be high quality design and would conflict with development plan policies CS13 WEL2 and WEL6. I have also concluded that the proposal would not provide adequate infrastructure contributions and would therefore conflict with WEL42.
59. The Council cannot demonstrate a 5 year housing land supply and therefore the provision of housing including affordable housing is a significant consideration. However I have given this only moderate positive benefit given the scale of the development. I have noted a number of other benefits associated with the scheme and take account of the weight I have ascribed to them above.
60. The Framework advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Given the conflict with the development plan and the advice on design in the Framework the other considerations do not indicate that a decision otherwise is appropriate. Albeit there is a shortfall in the housing land supply this is the first development in a Garden Village where design will be fundamental to its success and the shortfall of housing does not mean housing at any cost.

### **Overall conclusion**

61. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Simon Ricketts	Town Legal LLP
Gavin Hall	Savills
Richard Powell	Latchmoor Properties
Bruce Slattery	Jacobs Engineering
Jonathan Moore	MH Architects
Andrew Linfoot	Jacobs Engineering

### FOR THE LOCAL PLANNING AUTHORITY:

Luke Simpson	Adams Hendry
Alex Russell	Southampton & Fareham Legal Services Partnership
Justin Leach	LDA Design
Valerie Conway	VE Consulting
Maral Miri	Hampshire County Council

### INTERESTED PERSONS:

Mrs Brenda Clapperton	Secretary of Fareham Society
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### DOCUMENTS SUBMITTED DURING HEARING

- 1 Draft Unilateral Undertaking and summary Schedule submitted by appellant
  - 2 Comments on Revised National Planning Policy Framework submitted by Council
  - 3 Comments on revised national Planning Policy Framework, summary of outstanding issues and Dormouse mitigation strategy submitted by appellant
  - 4 Copy of e-mail from Council to Pins Case officer dated 10 August including NPPF statement, pre-application proposal, delivery trajectory for Welborne The Executive Leaders Announcement on HLS and extracts of Draft Planning Practice Guidance
  - 5 Copy of Judgement of European Court C323/17 People Over Wind and Peter Sweetman v Coillte Teoranta submitted by Council
  6. Copy of updated planning condition 2 to update plan reference numbers and copies of relevant plans (latest revisions)
  - 7 Copy of extract from Welborne Infrastructure Delivery Plan related to New Homes Bonus submitted by appellant
  - 8 Copy of various amended conditions submitted by appellant
  - 9 Original of signed, sealed and dated Unilateral Undertaking
  - 10 Appellants application for Costs
  - 11 Council's application for Costs.
- END



## Appeal Decision

Inquiry Held on 6 - 9 November 2018

Site visit made on 9 November 2018

**by Kenneth Stone BSc Hons DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12<sup>th</sup> April 2019**

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**Appeal Ref: APP/A1720/W/18/3199119**

**Land east of Posbrook Lane, Titchfield, Fareham, Hampshire PO14 4EZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Foreman Homes Ltd against the decision of Fareham Borough Council.
  - The application Ref P/17/0681/OA, dated 9 June 2017, was refused by notice dated 14 December 2017.
  - The development proposed is described as an 'Outline Planning Application for Scout Hut, up to 150 Dwellings, Community Garden, associated landscaping, amenity areas and means of access from Posbrook Lane in addition to the provision of 58,000 square metres of community green space'.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application was submitted in outline with all matters reserved for future consideration with the exception of access. The access details are shown on the plan 'Proposed Site Access 16-314/003E' which along with the 'Site Location Plan 16.092.01E' are the plans that describe the proposals. An illustrative plan was submitted and the latest iteration was 16.092.02F. However, this was for illustrative purposes only to demonstrate one way in which the site could be developed but does not form part of the formal details of the application.
3. Prior to the commencement of the Inquiry the Council and the appellant entered into a Statement of Common Ground. The original application had been submitted with the description of development in the banner heading above. The parties agreed that there was no requirement for the Scout Hut and removed this from the illustrative master plan and amended the description of development to reflect the amended proposed development.
4. I am satisfied that the proposed alteration to the scheme, which does not amend the red line boundary and makes only a minor adjustment to the overall scheme, is not material. I am satisfied that there would be no material prejudice to parties who would have wished to comment on the proposals and that the amended illustrative plan was available as part of the appeal documents and therefore available for parties to view and comment on. I have therefore considered the appeal on the basis of the amended description which

read as follows: 'Outline application for up to 150 dwellings, community garden, associated landscaping, amenity areas and a means of access from Posbrook Lane.'

5. In the Statement of Common Ground the Council and the Appellant agree that an Appropriate Assessment would be required in the light of The People Over Wind Judgement<sup>1</sup>. During the Inquiry a shadow Habitats Regulations Assessment document was submitted (APP4) to enable an Appropriate Assessment to be made. In this regard I consulted with Natural England to ensure that I had the relevant information before me if such an assessment were to be required. The main parties were given the opportunity to comment on Natural England's consultation response.
6. By way of an e-mailed letter dated 5 November 2018 the Secretary of State notified the appellant, pursuant to regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, that further information was required. The further information was publicised on 4 January 2019, a period of 31 days was given for the receipt of comments and the parties were given a period following the end of the publicity period to collate and comment on the matters raised.
7. I have had regard to all the Environmental Information submitted with the appeal including the original Environmental Statement, the Additional Information, the Shadow Habitats Regulations Assessment, the further responses and the parties' comments in reaching my conclusions on this appeal.
8. The Council has drawn my attention to a recent appeal decision, at Old Street, APP/A1720/W/18/3200409, which had been published since the Inquiry was conducted and in which similar issues were considered in respect of the Meon Valley. The parties were given the opportunity to comment on this decision.
9. The Government published a revised National Planning Policy Framework (the Framework), and updated guidance on how to assess housing needs as well as results of the Housing Delivery Test along with a technical note on 19 February 2019. The parties were given the opportunity to comment on how these may affect their respective cases. I have had regard to this information and the comments of the parties in reaching my decision.
10. I closed the Inquiry in writing on 19 March 2019.

### **Main Issues**

11. In the Statement of Common Ground the appellant and Council agree that with the completion of a satisfactory legal agreement reasons for refusal e through to l would be addressed. No objections to the Unilateral Undertaking were raised by the Council and these matters were not contested at the Inquiry. It was also agreed in the Statement of Common Ground that reason for refusal d could be overcome by the imposition of an appropriately worded condition, and I see no reason why this would not be appropriate.
12. On the basis of the above the remaining outstanding matters and the main issues in this appeal are:

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<sup>1</sup> The Court of Justice of the European Union judgement in the People over Wind and Peter Sweetman v Coillte Teoranta, case C-323/17

- The effect of the proposed development on the character and appearance of the area, including having regard to whether or not the site is a valued landscape and the effect on the strategic gap;
- The effect of the proposed development on the setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II\* listed buildings; and
- The effect of the proposed development on Best and Most Versatile Agricultural Land (BMVAL).

## Reasons

13. The development plan for the area includes The Local Plan Part 1: Core Strategy (2011 -2026) (LPP1), The Local Plan Part 2: Development Sites & Policies (2015) (LPP2) and The Local Plan Part 3: Welbourne Plan (2015) (LPP3).
14. LPP3 specifically addresses a new settlement at Welbourne and does not include policies that bear directly on the effects of the development the subject of this appeal. Its relevance is however material in the context of the wider housing land supply issues in the area.
15. In terms of LPP1 policy CS14 seeks to control development outside defined settlement boundaries seeking to resist proposals which would adversely affect its landscape character and function. While policy CS22 advises land within strategic gaps will be treated as countryside and development proposals will not be permitted where it affects the integrity of the gap and the physical and visual separation of settlements.
16. In LPP2 Policy DSP6 further advises in respect of residential development outside of defined urban settlement boundaries that it should avoid a detrimental impact on the character or landscape of the surrounding area. DSP5 addresses the protection and enhancement of the historic environment. In considering the impacts of proposals that affect designated heritage assets it advises the Council will give great weight to their conservation and that any harm or loss will require clear and convincing justification, reflecting the statutory and national policy positions.
17. Policy DSP40 in LPP2 includes a contingency position where the Council does not have a 5 year supply of housing land. It is common ground between the parties that the Council does not have a 5 year supply of land for housing albeit the extent, length of time this may persist and consequences are disputed. I address these latter matters further below however insofar as the parties agree that the Council cannot demonstrate a five year supply of housing land the contingency position in policy DSP40 is engaged and this advises that additional sites outside the urban area boundary may be permitted where certain criteria are met.
18. An emerging draft Local Plan, which in due course is anticipated to replace LPP1 and LPP2, was launched for consultation in autumn of 2017 but has now been withdrawn. At the time of the Inquiry I was informed that a further review is to take place following revisions to the National Planning Policy Framework and the Government's latest consultation in respect of housing figures. The Council propose to consult on issues and options relevant to the progression of the Council's new development strategy following the outcome

of the Government's recent consultation. Consultation on a new draft Local Plan is not now anticipated until the end of 2019.

19. The Titchfield Neighbourhood Plan 2011 – 2036 (TNP) is also emerging; it was published for consultation in July 2018 with a further draft submitted to the Council for a compliance check, in October 2018, prior to consultation as the submission draft. At the Inquiry it was confirmed that further documents were submitted to the Council and that the TNP complied with the Statutory requirements. The Council undertook Consultation on the submission draft between November 2018 and January 2019 but at this point in time the plan has not yet been submitted for independent examination. The TNP includes a plan identifying the strategic gap, the Meon gap, and the Defined Urban Settlement Boundary (DUSB) as well as housing policies which review the DUSB (DUSB 1) and address windfall sites (H1), affordable housing (H2), Local Need (H3) and Development Design (H4).

*Character and Appearance, including Valued Landscape and Strategic Gap*

20. The appeal site is an area of some 6.6 ha of open grazing field on the east side of Posbrook Lane. The land gently slopes from its north-west corner towards its eastern edge. The site is segregated from Posbrook Lane by a hedgerow but for the most part the site is open with little demarking fences, trees or hedge rows. There is some evidence of a previous subdivision of the site on a modern fence line however only limited post foundations remain and generally the whole site has a reasonably consistent grazed grassland appearance.
21. To the north, the appeal site abuts the settlement edge of Titchfield at an estate called Bellfield. The urban edge is open and harsh with little by way of softening landscaping. Towards the south-western corner the site abuts a cluster of buildings that includes the farmstead of Posbrook farm and which includes two Grade II\* listed buildings (the Farmhouse and the southern barn). The boundary between these is screened for the most part by a substantial tree and hedgerow belt. Beyond these and towards the south are open agricultural fields. To the east the site slopes down to the Titchfield Canal, valley floor and River Meon beyond.
22. The Meon Valley is a major landscape feature that runs through the Borough and slices through the coastal plain. The parties agree that the site is located within the Lower Meon Valley Character Area but disagree as to the finer grain character type as detailed in the 1996 and 2017 Fareham Landscape Assessments. The appellant points to the 2017 Assessment identifying the western part of the appeal site as being identified as open coastal plain: Fringe Character with a small portion of the site being open valley side. The Council contend that the whole site is more appropriately identified as open valley side.
23. The difference in opinion and identification relates to the influence of the urban settlement boundary, the topography of the site and other landscape features in the surroundings. The fact that the 2017 classification is based on somewhat historic data does call into question the accuracy at the finer grain. There is some evidence in terms of photographs and on site that the site was subdivided and that there may have been different practices implemented which resulted in parts of the site having a different appearance and therefore leading to a different classification at that stage. On site I was firmly of the view that the site was of an open character with little in the way of field boundaries, hedges or other landscape features to different areas of the site.

Whilst there was a break in the slope this was minimal and did not change the characterisation from a gentle slope. There were minor variations across the site and I was not persuaded that this was such a feature that would change the character type of the site. Finally, in the context of the urban settlement edge influence it is undeniable that it is there. There is a lack of screening and there is a harsh and readily visible urban edge. This however is a distinct break with the open rural field which then flows to the open agricultural fields beyond the farmstead cluster and the lower valley floor below. In my view in the wider context the urban influence is given too much weight in the appellant's assessment and in association with the sub division of the site into smaller fields adds to the reduced weight given to the effect of the proposed development.

24. The proposed development would result in the provision of a suburban housing estate of up to 150 units on an open field that would substantively change the character of the field. The field appears, when looking south and east, as part of the broader landscape compartment and part of the Lower Meon Valley landscape. Views back towards the site would result in the perception of the intrusion of housing further into the valley and valley sides to the detriment of the character of the valley. The characteristics of the site are consistent with those of the Meon Valley and representative of the open valley side which includes sloping landform, a lack of woodland with views across the valley floor and is generally pastoral with some intrusive influences of roads or built development.
25. The visual effects of the development would be evident from a number of public footpaths both through and surrounding the appeal site as well as along Posbrook Lane, to the south and from the valley floor and opposite valley side. The further encroachment of built development into the countryside would detract from the rural appearance of the area.
26. The potential for landscaping to screen and reduce the visual effects and to a certain extent provide some positive contribution was advanced by the appellant. Whilst additional landscaping along the proposed urban edge would produce an edge that was more screened and in effect a softer edge than present is undeniable and would of itself improve the appearance of the existing urban edge. However, this needs to be weighed against the loss of the open field separation of elements of built development and the creeping urbanisation of the area. Whilst planting would assist in reducing the direct line of sight of houses in the longer term there would still be effects from noise, activity, illumination in the evening along with the localised views that would inevitably and substantively change.
27. I would characterise the landscape and visual effects as substantial and harmful in the short to medium term, albeit this would reduce in the longer term, I would still view the adverse effect as significant.
28. There is some dispute as to whether the site is a valued landscape. The Lower Meon Valley is a significant landscape feature and both parties assessed the site against the box 5.1 criteria in Guidelines for Landscape and Visual Impact Assessment. In this context it is a reasonable conclusion that both parties accept that the Lower Meon Valley has attributes that are above the ordinary. There is some debate as to whether the appeal site contributes to these or is part of that as a valued landscape. On the basis of the evidence before me I

have no difficulty in accepting that the Lower Meon Valley is a valued landscape in the context of the Framework and this is a conclusion consistent with my colleague in the Old Road decision. From my visit to the site and the evidence presented to me I am of the view that the appeal site shares a number of those attributes including the nature of the rural landscape and topography, its scenic quality and that it is representative of the valley sides character type. The site does form part of the broad visual envelope of the Lower Meon valley and part of the landscape compartment and therefore should be considered as part of the valued landscape.

29. Turning to the issue of the strategic gap. The appeal site is located in the Meon Valley strategic gap. The purpose of the strategic gap as identified in policy CS22 is to prevent development that significantly affects the integrity of the gap and the physical and visual separation of settlements. Whilst the Council sought to broaden this out to include the setting of settlements that is not how the development plan policy or indeed its policy justification is written. This states the gaps help to define and maintain the separate identity of individual settlements and are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green corridors. To go beyond these factors in assessing the development against policy would be introducing tests that are not within the development plan.
30. The proposed scheme would extend the urban edge of Titchfield further into the gap than it presently is. There would however be no perception of coalescence or indeed any visual reduction of the separate settlements (I do not see the cluster of buildings as a separate settlement in this context). There would be no demonstrable reduction in the physical separation and the gap's integrity would not be significantly affected. Whilst there would be a minor outward extension in the context of the settlement pattern and separation of settlements the proposed development would be minor and would not result in a significant effect.
31. Overall for the reasons given above I conclude that the proposed development would result in material harm to the character and appearance of the area. This would result in harm to a valued landscape. There would however be no significant effect on the strategic Meon Gap. Consequently, the proposed development would conflict with policies CS14 and DSP6 which seek to protect the character and appearance of the area of land outside the defined urban settlement boundary but would not conflict with policy CS22.

*Setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II\* listed buildings*

32. South of Titchfield on the east side of Posbrook Lane there is an historic farmstead that includes the listed buildings of Great Posbrook and the southern barn at great Posbrook farm. Both of these are Grade II\* which puts them in the top 8% or so of listed buildings in the Country. They are a significant and invaluable resource.
33. The list description for Great Posbrook identifies it as a C16 house altered in the C19 with evidence of elements of C17 and C18 interior details. There is some question mark over the precise dating of the origins of the building with the Council pointing to evidence that it dates from early C17. While the alterations have created two parallel ranges the earlier T shaped form is unusual and is of particular architectural importance because of its rarity. The

main parties' experts agree that the building is of considerable historic interest due to its fabric, architectural composition and features.

34. The list description for the southern barn identifies it as a late medieval aisled barn. However, the Council point to more recent dendrochronology which indicates that it is likely to be late C16 or early C17 with the eastern end being C18. It is a substantial historic barn with considerable vernacular architectural interest being a good and relatively rare example of a high status English barn. Its size and scale demonstrating its association with a high status farm.
35. The listings make reference to other buildings in the cluster forming the farmstead including a store shed, small barn, cartshed and pigsties but note that these are of local interest only. The main listed buildings together with the buildings of local interest form an early farmstead with a manorial farmhouse, significant barn and numerous other buildings. There have been recent interventions as part of enabling development which resulted in the demolition of modern farm buildings the conversion of some of the historic buildings and the construction of new buildings to provide for additional residential occupation on the site. Much of the new building footprint was related to original buildings in an attempt to reinstate the historic arrangement of farm buildings in a courtyard pattern.
36. The significance of the listed buildings and the farmstead derives from the age, architectural quality, size, scale and relationship of buildings. There is a functional relationship with the adjoining land which was likely farmed as part of the farm holding and reasonable evidence to suggest that there may be an associative link with Titchfield Abbey which adds and contributes to this significance. There has been some more recent and modern infill development and recent housing within the farmstead adjacent and in the wider setting which has a negative impact and detracts from the significance. The wider setting of the site within a rural landscape assists in understanding the scale and status of the land holding, sets the farmstead in an appropriate open rural agricultural setting and separates it from the close by settlement of Titchfield. This contributes to the overall significance of these assets.
37. The proximity of the settlement of Titchfield and the exposed urban edge already have a negative impact on the wider setting of the heritage assets bringing suburban development close to the farmstead and reducing the wider rural hinterland.
38. The appeal site is formed by open land that wraps around the northern and eastern edge of the cluster of buildings within which the farmstead is set. It lies between the southern edge of Titchfield and the northern edge of the cluster of buildings and abuts the northern and eastern boundary of the farmhouse.
39. It is common ground that the proposals would not result in physical alterations to the listed buildings. There would be no loss of historic fabric or alterations to the architectural quality or form of the actual buildings. Similarly there would be no direct alteration of the farmstead.
40. Both parties also agree that the proposal would be located within the setting of the listed buildings and the farmstead. There is also agreement that the proposal would result in harm to the setting of the listed buildings by virtue of built development being closer to the buildings and reducing the rural setting of the buildings. Whilst both parties accept that the harm would be less than

substantial in terms of the Framework, the dispute arises in respect of the level of that harm. The appellant broadly contends that there are limited aspects where the effect would be perceived or experienced and with appropriate landscaping the effect would be reduced over time such that it would fall at the bottom end of the spectrum of less than substantial harm, albeit acknowledging that some harm would be occasioned. The Council on the other hand would put the harm more to the middle of the range that would be less than substantial and contend there are a number of areas where the perception would be significant, that the landscaping may reduce the effect over time, but not remove it, that the noise, activity and illumination associated with a suburban housing estate would further add to that impact and that the effect of changing that land from open rural land to suburban housing would fundamentally alter the setting and obliterate some of the functional and associative links with the adjoining land, albeit different degrees of weight were ascribed to the various elements of harm.

41. There is no dispute that the site would result in the introduction of housing on the area of land adjacent and bordering the farmstead and main farmhouse. This would bring the settlement of Titchfield up to the cluster of buildings and in effect subsume that once separate element into the broader extent of the settlement. This would reduce the connection of the existing farmstead and listed buildings to the rural hinterland and obscure the separation from the nearby settlement. The character of that change would be noticeable and harmful. It would be perceived when travelling along Posbrook Lane when leaving or entering the village and would be readily appreciated from Bellfield and the adjacent existing settlement edge. There are also public footpaths running through the land. These would be both static and kinetic views when moving along and between the various views. This would be a significant and fundamental change.
42. When viewed from the south, along Posbrook Lane and the public footpaths, travelling towards the farmstead and Titchfield the size and scale of the barn are fully appreciated, there are views available of the manorial farmhouse within these views and together the site is recognisable as a distinct farmstead. Whilst the urban edge of Titchfield is also visible it is appreciated that there is a degree of separation. The proposed development would intrude into these views and in the short to medium term would be readily distinguishable as suburban housing. In the longer-term landscaping may reduce this negative effect by the introduction of a woodland feature at its edge, which the appellant argues is reflective of the historic landscape pattern in the area. However, this would introduce a sense of enclosure around the farmstead and listed buildings that would detach them from the rural hinterland and reduce that historic functional connection with the adjoining open land. Whilst there is evidence of small wooded areas in the historic mapping these were freestanding isolated features and not so closely related to areas of built development. The point of the historic pattern in the area is the farmstead with open land around that was once farmed by the manorial farm and which would not have included such features in such proximity to the main farmstead.
43. There would also be views of the relationship between the farmhouse and the proposed development in views on the public paths to the east. Again, these would be significant and harmful in the short to medium term. There may be some reduction in that harm as landscaping matures but even with dense planting and the softening of the existing urban edge it will be an undeniable

fact that suburban development has been undertaken and that there is no separation between the settlement of Titchfield and the historic farmstead including the listed buildings.

44. For the reasons given above I conclude that there would be harm to the setting of the listed buildings and historic farmstead. I would characterise that harm as less than substantial as this would not obliterate the significance of these historic assets. The proposal would however have an adverse and harmful effect on the setting of these assets which would affect their significance given the contribution that the setting makes to that significance. The urbanisation of the remaining area that separates the farmstead and listed buildings from the settlement is significant and whilst the rural hinterland remains to the south and west the dislocation from the existing built up area is an important and fundamental component of that setting that would be lost as a result of the development. The effect is therefore significant and would not in my view be at the lower end of the less than substantial scale as contended by the appellant but more in line with that suggested by the Council. The proposal would therefore conflict with development plan policy DSP5 which seeks the protection and enhancement of heritage assets and is consistent with national policy.
45. These are two Grade II\* listed buildings and the Framework advises that great weight should be given to a designated heritage asset's conservation, any harm should require clear and convincing justification and assets should be conserved in a manner appropriate to their significance. I also have regard to my statutory duty in respect of listed buildings and their setting. The courts have also held that any harm to a listed building or its setting is to be given considerable importance and weight. These matters are reflected in my planning balance below, which includes the Framework's 196 balance.

*Best and Most Versatile Agricultural Land*

46. The appellant undertook a survey of agricultural land and this assessment is provided in appendix SB3 of Mr Brown's proof. This identifies the limited amount of Grade 3a land (4.1 Ha) that would be affected by the development and sets this in the context of Fareham. In my view this does not trigger the sequential test in the Framework footnote 53 as significant development.
47. It is accepted that whilst there is a loss of BMVAL and that this is a negative to be weighed against the scheme it would not of itself amount to such that would justify the dismissal of the appeal. This is a point that was not refuted by the Council who accepted that it may not justify dismissal but should be weighed as a negative factor in the overall balance against the development.
48. I have no substantive evidence to depart from those views and the approach adopted is consistent with that of a colleague in an appeal at Cranleigh Road (APP/A1720/W/16/3156344).
49. The appellant's report concluded that given the grade of land, the small scale and the overall comparative effect on such land in Fareham, whilst it is a negative, it should be afforded no more than limited weight. I concur with that assessment for the views given and therefore ascribe this loss limited weight in my overall planning balance.

## **Other Matters**

50. The Council and appellant agree that the Council cannot demonstrate a 5 year housing land supply. Time was spent at the Inquiry considering the extent of the shortfall based on, amongst other matters, the correct buffer and the correct household projection base date to use. The publication of the Housing Delivery Test results confirmed that Fareham is a 5% buffer Authority. The government also confirmed that it is the 2014 based household projections that should be used as the basis for calculation of the five-year requirement under the standard method. On this basis both parties agree that the minimum five-year requirement would be 2,856 in the period 2018 to 2023.
51. The updated position of the parties is thus a 3.08 years supply taking the appellants position or a 4.36 years supply if the Council's position were to be adopted. I have been provided with further supply evidence in relation to the Old Street Inquiry which calls into question some of the supply side dwellings included in the Council's figures which were permitted since April 2018. Excluding these the appellant suggests the Council's figures would drop to 4.08 years supply.
52. Whichever figures are adopted it is clear that the Council cannot identify a five-year supply of available housing land and that the shortfall is significant. The provision of additional housing in an area where there is a significant housing shortfall in my view translates into a significant positive benefit for the scheme in terms of the overall planning balance.
53. The appeal site is located where there is potential for a significant effect on a number of European designated wildlife sites which comprise Special Areas of Conservation (SACs), Special Protection Areas (SPAs) potential Special Protection Areas (pSPAs) and Ramsar sites. The proposal has been subject to Habitats Regulation Assessment and a shadow Appropriate Assessment process by the appellant. Given the requirement for further publication of environmental information in association with the Environmental Statement consultation was undertaken with Natural England as the Nature Conservation Body to ensure there was no further procedural or administrative delay at the end of the process. However, given the conclusion of my assessment of the effect of the development on the wider landscape and the designated heritage assets I am not minded to allow the appeal. On this basis an Appropriate Assessment does not need to be carried out, as it is only in circumstances where I am minded to grant consent that such an assessment is required to be undertaken. Moreover, in the interim the Framework, paragraph 177 has been amended to advise that it is not the requirement to conduct Appropriate Assessment but the conclusion that following that assessment there is an identified likely significant effect on a habitats site where the presumption in favour of sustainable development does not apply. In these circumstances this matter does not therefore affect the approach to my planning balance.

## **Benefits of the Scheme**

54. As noted above the provision of housing in an Authority area where the Council cannot identify a five-year housing supply is a significant benefit of the scheme. The Statement of Common Ground signed by the parties makes it clear that there is a significant need for affordable housing. The provision of 40% of the total number of units provided as affordable housing, secured

through the planning obligation, is therefore also a significant positive benefit of the scheme.

55. The appellant contends that there would be between 360 and 465 direct, indirect and induced jobs created by construction. It is further contended that there would be an on-going £4.1m gross expenditure per annum from future residents. It is further contended that the landscaping and ecological mitigation would improve the appearance of the harsh urban edge currently created by Bellfield. These are benefits that accrue from this development and are therefore reasonable to add as positive contributions in the planning balance. They are of a scale which reflects the scale of the development.
56. For these reasons the social benefits from additional housing and affordable housing are of significant positive weight, the economic benefits are of moderate positive weight, and the environmental benefits are of limited positive weight.

### **Planning Obligation**

57. A completed Unilateral Undertaking (UU) dated 8 November was submitted to the Inquiry before the conclusion of it sitting. The UU secures matters related to transport including the site access, travel plan and construction traffic management as well as a contribution towards sustainable transport. The UU also secures public open space provisions, including contributions; environmental and habitat obligations, including commuted maintenance and disturbance contributions and the transfer of a bird conservation area; an education contribution and obligations to protect or provide on site routes for the public. These are in effect mitigation measures or matters directly related to the development and do not amount to positive benefits.
58. The appeal is to be dismissed on other substantive issues and whilst an obligation has been submitted, it is not necessary for me to look at it in detail, given that the proposal is unacceptable for other reasons, except insofar as it addresses affordable housing.
59. In respect of affordable housing the UU secures 40% of the housing as affordable units with the mix, tenure and location controlled by the undertaking. I have already identified this as a benefit of the scheme which will be taken into account in the planning balance.

### **Planning balance**

60. I have concluded that the proposed development would result in material harm to the significance of two Grade II\* listed buildings through development in the setting of those buildings. This harm is in my view less than substantial harm in the terms of the Framework a position also adopted by both main parties. Paragraph 196 of the Framework advises in such circumstances that this should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.
61. I have identified the public benefits of the scheme above and these include the provision of additional housing in an authority where there is not a five year supply of housing land and the provision of affordable housing in an area where there is a significant need. I give these matters significant weight. Added to these would be the additional jobs and expenditure in the locality arising from construction activity and following completion of the development. Given the

scale of development these would not amount to small figures and I have ascribed this moderate weight. The proposed landscaping and biodiversity enhancements are a balance and required in the context of also providing a degree of mitigation I therefore only ascribe these limited positive weight.

62. The Framework makes it clear that when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Furthermore it advises that any harm to the significance of a designated heritage asset should require clear and convincing justification. There is a statutory duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. The courts have interpreted this to mean that considerable importance and weight must be given to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise in planning decisions.
63. Heritage assets are an irreplaceable resource and they should be conserved in a manner appropriate to their significance. The Farm House and Barn at Great Posbrook are both Grade II\* and therefore are assets of the highest significance. The development of a substantial housing estate in the rural setting of these listed buildings, and farmstead of which they form part, would materially alter the relationship of the listed buildings and farmstead to the nearby village and wider rural hinterland. This would merge the existing distinct and separated grouping of buildings with the expanding village removing that degree of separation and obscuring the historic relationship with the village and wider countryside. I would not characterise this less than substantial harm as of such limited effect as 'at the lower end' within that spectrum as suggested by the appellant. Indeed, the setting contributes to the significance of these listed buildings and their appreciation from both distinct view points and kinetic views. The negative effect would have a measurable and noticeable effect on the existing physical relationships of development in the area and thereby the understanding of the historic development of those over time. The understanding of the high status nature of the house and barn, and their significance, is derived in part from an appreciation of the separation from the village, their setting within the wider agricultural and rural hinterland as well as their size, scale, architectural quality and relationship of the buildings to each other and the surrounding development.
64. On the basis of the above I conclude that the less than substantial harm I have identified, and to which I give considerable importance and weight, is not outweighed by the significant public benefits of the scheme. On this basis I conclude that the scheme should be resisted. As the scheme fails the paragraph 196 test this would disengage the paragraph 11 d tilted balance that would otherwise have been in play given the lack of a five-year supply of housing land.
65. The scheme would be subject to the requirement to carry out an Appropriate Assessment under the Habitats Regulations if I were minded to allow the appeal. At the time of submission of the appeal Paragraph 177 of the Framework required that the presumption in favour of sustainable development, in paragraph 11, would not apply where an Appropriate Assessment was required to be carried out. The latest iteration of the Framework has amended paragraph 177 to only disengage the presumption in favour of sustainable development where the development is likely to have a

significant effect on a habitats site. If an Appropriate Assessment has concluded the development would not adversely affect the integrity of the habitats site the presumption would not be disengaged. However, given my conclusions in respect of the impact on heritage assets and the other harms I have identified I am not minded to allow the appeal and therefore I do not need to carry out an Appropriate Assessment.

66. Whilst the presumption in favour of sustainable development is not disengaged by virtue of paragraph 177 of the Framework, paragraph 11 d, the so called 'tilted balance', is disengaged by virtue of my conclusions in relation to the effect on the heritage assets and the application of 11 d i. The proposal therefore is to be considered in the context of a straight balance. Section 38(6) requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposal would result in material harm to the character and appearance of the area, which is a valued landscape, to the setting of two Grade II\* listed buildings and a minor adverse effect on best and most versatile agricultural land in the area. On this basis the proposal would conflict with policy CS14 in the LPP1 and DSP5, DSP6 and DSP40 in the LPP2.
67. The Authority cannot demonstrate a 5 year supply of housing land and policies which restrict housing development through such matters as settlement boundaries and gaps are out of date. They do not provide for the necessary housing to make provision for adequate housing in the area. However, those policies, which include CS14, CS22 and DSP6 do seek to protect the countryside and fulfil a purpose that is consistent with the Framework. The Council is seeking to address the shortfall and is making positive steps in that regard albeit there is dispute as to how successful that is. Nevertheless matters are moving forward and although there is still an outstanding shortfall, which even if I accept is as great as suggested by the appellant, is improving on historic figures and there appears to be greater opportunities for this situation to be improved further. I accept that Welbourne may well not be moving at the pace that has previously been suggested and not as quickly as the Council would suggest, but it is still moving forward and with a significant complex development of this nature matters will take time but once milestones are reached momentum is likely to quicken. Of particular relevance here is the determination of the extant application, which remains undetermined but continues to move forward. On the basis of the information before me the determination of this would be in the spring or middle of this year. Given the above I do not afford these particular policies the full weight of the development plan but I still accept that they have significant weight and the conflict with those policies that I have identified above still attracts significant weight in my planning balance.
68. I note that policy DSP5 reiterates national policy and reflects the statutory duty and is therefore accorded full weight and conflict with it, as I have found in this regard, is afforded substantial weight. 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. In the context of the harms I have identified which relate to landscape, heritage assets and best and most versatile agricultural land these result in conflicts with specific criteria in policy DSP40 for the reasons given above in respect of those matters and therefore there is conflict with the policy. These

are two significant policies where weight has not been reduced and the proposal when considered in the round is not in accordance with the development plan taken as a whole.

69. The ecological provisions payments and additional bird sanctuary are primarily mitigation requirements resultant from the proposed development and its likely potential effects and do not therefore substantively add a positive contribution to the overall balance.
70. The impact on the significance of the Grade II\* listed buildings is not outweighed by the public benefits of the scheme and therefore the additional harms related to landscape and BMVAL only add further to the weight against the proposal. The advice in the Framework supports the conclusions to resist the proposal. There are therefore no material considerations that indicate that a decision other than in accordance with the development plan would be appropriate.

**Overall conclusion**

71. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Christopher Boyle QC

Instructed by Woolf Bond Planning LLP

He called:

Jeremy Smith BSc  
(Hons), DipLA, CMLI  
Ignus Froneman  
B.Arch.Stud, ACIfA,  
IHBC

SLR Consulting Limited

Heritage Collective UK Limited

Stephen Brown BSc  
(Hons) DipTP MRTPI

Woolf Bond Planning LLP

### FOR THE LOCAL PLANNING AUTHORITY:

Paul Stinchcombe QC  
& Richard Wald

Instructed by Southampton and Fareham Legal  
Partnership

He called:

Andy Blaxland BA  
(Hons), DipTP, Dip Mgt,  
MRTPI

Adams Hendry Consulting

Lucy Markham MRTPI  
IHBC

Montagu Evans

Philip Brashaw BSc  
(Hons) BLD, CMLI

LDA Design

### FOR THE TITCHFIELD NEIGHBOURHOOD FORUM :

David Phelan

Titchfield Neighbourhood Forum

### INTERESTED PERSONS:

Nick Girdler  
Robert Marshall  
William Hutchison  
Linda Davies

Chairman Titchfield Village Trust  
Member of Fareham Society  
Chairman Hillhead Residents Association  
Local Resident

DOCUMENTS SUBMITTED AT INQUIRY BY APPELLANT

- APP1 Housing Land Supply Statement of Common Ground.
- APP2 Press Release dated 18 October 2018 from Fareham Borough Council.
- APP3 Appeal Decision letter APP/W3520/W/18/3194926.
- APP4 Habitats Regulations Assessment Screening & Shadow Appropriate Assessment prepared by CSA Environmental.
- APP5 Unilateral Undertaking dated 8 November 2018.
- APP6 Bundle of three Committee reports (P/17/1317/OA, P/18/0235/FP and P/18/0484/FP) confirming the Council's approach to Policy DSP40.
- APP7 Additional suggested conditions.
- APP8 Letter from Hampshire and Isle of Wight Wildlife Trust confirming their agreement to take on the land secured as the Bird Conservation Area in the Unilateral Undertaking.
- APP9 Closing submissions on behalf of the appellant.

DOCUMENTS SUBMITTED AT INQUIRY BY LOCAL PLANNING AUTHORITY

- LPA1 List of Appearances on behalf of the Council
- LPA2 Updated extract from 'The Buildings of England Hampshire: South', appendix 14b to Ms Markham's proof of evidence.
- LPA3 Conservation Area Appraisal and Management Strategy: Titchfield Abbey, Fareham Borough Council adopted sept 2013 – substitution for Core Document F11.
- LPA4 Appeal Decision letter APP/W1715/W/17/3173253.
- LPA5 Copy of Policies 1CO and 2CO from the Eastleigh Borough Local Plan.
- LPA6 Announcement from the Leader of Fareham Borough Council dated 5 November 2018.
- LPA7 S106 Obligations Justification Statement.
- LPA8 Opening submissions on behalf of the Council.
- LPA9 List of documents to be referred to during Evidence in Chief of Philip Brshaw.
- LPA10 List of documents to be referred to during Evidence in Chief of Lucy Markham.
- LPA11 Draft schedule of conditions.
- LPA12 e-mail from Strategic Development Officer Children's Services Department Hampshire County Council dated 8 November 2018.
- LPA13 Plan of route and points from which to view the site during the appeal site visit.
- LPA14 Closing submissions on behalf of the appellant.

DOCUMENTS SUBMITTED AT INQUIRY BY TITCHFIELD NEIGHBOURHOOD FORUM

- TNF1 Opening statement on behalf of Titchfield neighbourhood Forum
- TNF2 Email exchange with appellant regarding drainage dated 6 November including various attachments
- TNF3 List of documents referred to in Evidence in Chief of Mr Phelan
- TNF4 Closing Statement on behalf of Titchfeild neighbourhood Forum

DOCUMENTS SUBMITTED AT INQUIRY BY THIRD PARTIES

INQ1 Speaking note from Mr Girdler  
INQ2 Letter read out by Mr Marshal on behalf of The Fareham Society  
INQ3 Speaking note from Mr Hutcinson

DOCUMENTS SUBMITTED AFTER INQUIRY

PID1 Additional Environmental Information submitted by appellant under cover of letter dated 14 December 2018.  
PID2 Copy of Press notice of publication of Additional Environmental Information.  
PID3 Comments on Additional Environmental Information by Titchfield neighbourhood Forum.  
PID4 Comments on Additional Environmental Information by Fareham Borough Council.  
PID5 'Old Street' Appeal decision APP/A1720/W/18/3200409 submitted by Fareham Borough Council  
PID6 Fareham Borough Council comments on 'Old Street' decision.  
PID7 Appellant's comments on 'Old Street' decision.  
PID8 Natural England's (NE) consultation response on shadow Habitats Regulation Assessment as Statutory nature Conservation Body.  
PID9 Appellant's response to NE's consultation response (PID8) including an updated shadow Habitats Regulation Assessment.  
PID10 Titchfield neighbourhood Forum's response to NE's consultation response (PID8)  
PID11 Titchfield Neighbourhood Forum's comments on the Housing Delivery Test (HDT) results and the changes to the National Planning Policy Framework (the Framework).  
PID12 Fareham Borough Council's comments on the HDT results and the changes to the Framework.  
PID13 Appellant's comments on the HDT results and the changes to the Framework.  
PID14 Titchfield Neighbourhood Forum's final comments on HDT and Framework  
PID15 Appellant's final comments on HDT and Framework.

END



## Appeal Decision

Inquiry Held on 24 to 26 September 2019

Site visits made on 23, 25 and 26 September 2019

**by Grahame Gould BA MPhil MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 5 November 2019**

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**Appeal Ref: APP/A1720/W/19/3230015**

**Land to the east of Downend Road Portchester**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Miller Homes against the decision of Fareham Borough Council.
  - The application Ref P/18/0005/OA, dated 2 January 2018, was refused by notice dated 26 April 2019.
  - The development proposed is described as 'Outline planning application with all matters reserved (except the means of access) for residential development, demolition of existing agricultural buildings and the construction of new buildings providing up to 350 dwellings; the creation of new vehicular access with footways and cycleways; provision of landscaped communal amenity space, including children's play space; creation of public open space; together with associated highways, landscaping, drainage and utilities'.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Miller Homes against Fareham Borough Council. That application is the subject of a separate Decision that will follow the appeal decision.

### Preliminary Matters

3. The Inquiry sat for three days between 24 to 26 September 2019. I made what the Planning Inspectorate refers to as an 'access required' visit to the site on 25 September when I was granted access to enter and view the site, rather than being accompanied by representatives for the appellant and the Council. I also made unaccompanied visits to the area within the vicinity of the appeal site on 23 and 26 September.
4. While the Inquiry finished sitting on 26 September, I adjourned it, as opposed to closing it to allow for the submission of: a certified copy of an executed Section 106 agreement (S106); the appellant's and the Council's closing submission in writing; some documents referred to by the parties in evidence (inquiry documents [IDs]); a final version of the inquiry position statement; and the appellant's written application for costs and the Council's response to that application. The Inquiry was closed in writing on 21 October 2019.

5. The S106 was received by the Planning Inspectorate on 3 October 2019 and it contains planning obligations concerning:
- the provision of 40% affordable housing within the development;
  - the implementation of improvements to the Cams bridge;
  - the undertaking of off-site highway works for alterations at the railway bridge in Downend Road and on the A27;
  - the payment of contributions for various off-site highway and transportation improvements and the implementation of an occupiers travel plan;
  - the provision of and the payment of maintenance contributions for public open and play space;
  - the payment of a contribution to mitigate the development's effects on off-site designated habitats; and
  - the payment of a contribution for school facilities in the area.

### **Main Issues**

6. The main issues are:
- whether the development would make adequate provision for pedestrian access via Downend Road and the effects of providing pedestrian access on the operation of Downend Road;
  - whether there would be accessibility to local services and facilities for the occupiers of the development by a range of modes of transport; and
  - the effects of the development on the integrity of the Portsmouth Harbour Special Protection Area and Ramsar Site, the Solent and Southampton Special Protection Area and Ramsar site and the Solent and Dorset Coastal Potential Special Protection Area (the designated habitats).

### **Reasons**

#### *Pedestrian access via Downend Road and effects on the operation of Downend Road*

7. Having regard to the wording of part a) of the reason for refusal, ie pedestrian use of Downend Road and any subsequent implications for the 'safety' of and 'convenience' of users of this road, and the evidence put to me, there are various matters that come within the scope of the consideration of this main issue. Those matters, which I consider below in turn, being: the pedestrian routes that would be available to occupiers of the development; the pedestrian demand (movements) and the distribution of those movements amongst the pedestrian routes; and the options for and effects of altering the railway bridge in Downend Road to accommodate the pedestrian movements arising from the development.
8. Inevitably there is some overlap between the matters of pedestrian movements and their distribution to be consider under this issue and the

wider accessibility to services and facilities that concerns the second main issue that I have identified.

Proposed pedestrian routes

9. The development would involve the construction of 350 dwellings to the north of a railway line, just beyond part of Portchester's established residential area. The development would have three pedestrian routes to and from it and they would be via: Downend Road, the westernmost of the routes (route A); Cams bridge, the central route (route B); and Upper Cornaway Lane, the easternmost route (route C).
10. Cams bridge crosses the railway line and currently provides access between the site and a small vehicle repair garage and The Thicket, the latter being a residential street. Separately planning permission has been granted for upgrading works to the Cams bridge to facilitate its use as a pedestrian route for occupiers of the appeal development. On the southern side of Cams bridge there is a tarmacked track leading off The Thicket. With the upgrading of Cams bridge route B would be a pedestrian route of an essentially urban character.
11. Route C would in part be reliant on the use of an unsurfaced, one metre wide and 200 metre or so length of a public right of way (footpath PF117), and Upper Cornaway Lane, a street providing access to the crematorium and some chalet type homes. Given the rural character of FP117 and its current suitability only for recreational use, some widening and surfacing works would be undertaken to it to enable it to be used more easily by residents of the proposed development.
12. Downend Road can be characterised as being a local distributor road<sup>1</sup>, with a two-way, daily flow of the order of 6,800 vehicles per day<sup>2</sup>. Pedestrians using route A and travelling to and from destinations south of the railway line would have to cross the railway bridge in Downend Road, following some alterations to the bridge being made, which are referred to in more detail below. That railway bridge has variously been described as providing a north/south or east/west crossing of the railway line and I shall hereafter only refer to it as an east/west crossing of the railway line and to drivers making eastbound or westbound crossings of the bridge. On the railway bridge and westbound of it, as far as the junction with the A27, Downend Road is subject to a 30mph speed limit. Immediately eastbound of the railway bridge the speed limit increases to 40mph.
13. In terms of accessing places of work and education, shopping and leisure facilities, public transport (Portchester railway station and bus stops along Portchester Road [A27]) and other services and facilities etc, it is agreed that some occupiers of the development would walk to and from the previously mentioned destinations. However, there is disagreement about the scale of the pedestrian demand and how it would be distributed amongst the three routes.

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<sup>1</sup> Paragraph 6.24 of Mrs Lamont's PoE

<sup>2</sup> Table 2.1 within Mr Wall's proof of evidence and paragraph 41 of Mr Litton's closing submissions for the appellant (ID21)

The pedestrian demand (movements) and the distribution of those movements

14. The appellant's most up to date estimate of the total daily pedestrian demand generated by the development would be nearly 700 movements per day, inclusive of walking trips to access buses and trains, 26.6% or so of all daily trips arising from the development<sup>3</sup>. By contrast the Council estimates that the number of daily single mode walking trips would be of the order of 284 trips, ie origin to destination trips excluding the use of buses or trains (CD10A). The parties agree for the purposes of estimating the development's pedestrian demand that data from the national travel survey 2018 (NTS2018) should be used to establish all trip generation, mode share and journey purpose. It is further agreed that the 2011 Census data should be used to determine the development's population.
15. However, there is disagreement between the appellant's and the Council's transportation witnesses<sup>4</sup> as to what flexibility should be used in applying the acceptable walking distance guidance stated by the Chartered Institution of Highways and Transportation (CIHT) in its guidelines for the 'Provision for journeys on foot' (CIHT2000 [CD25]). There is also a difference of opinion as to whether the mode share for walking to work recorded by the Census, ie 52% of the national level, should be used as a proxy when considering the propensity for all walking trips arising from the development. The consequence of those disagreements being whether local places of work, schools, shopping facilities etc would or would not be within walking range of the development, having regard to the alternatives offered by the three routes.
16. Mr Wall for the appellant is of the view that the suggested acceptable walking distances set out in Table 3.2 of CIHT2000 are dated and are being too rigidly applied by Mrs Lamont for the Council. The guidelines set out Table 3.2 are:

	Town centres (metres)	Commuting/school and sightseeing (metres)	Elsewhere (metres)
Desirable	200	500	400
Acceptable	400	1,000	800
Preferred Maximum	800	2,000	1,200

17. While it has been suggested that the acceptable walking distance guidelines stated in CIHT2000 are dated, given that they are nearly 20 years old, that concern does not seem to be borne out by the information contained within Table NTS0303 contained within NTS2018<sup>5</sup>. That is because between 2002 and 2018 the average walking trip length has remained constant at 0.7 miles (1.12 Km), while walking trips over a mile (1.6 Km) have consistently been of an average length of around 1.4 miles (2.25 km). Those national survey results suggest that individuals' attitudes towards walking trip

<sup>3</sup> Page 2 of CD10A and Paragraph 2.3.9b of Mr Wall's PoE

<sup>4</sup> Mr Wall for the appellant and Mrs Lamont for the Council

<sup>5</sup> Page 4 Appendix 1 of Mrs Lamont's PoE

lengths have not altered appreciably and that there is no particular issue with the currency of the guidance contained in Table 3.2 of CIHT2000.

18. In any event were the guidelines stated in CIHT2000 thought to be out of date, then I would have expected the CIHT to have revised them, either by issuing an amended version of CIHT2000 or publishing an entirely new document. Neither of those courses of action have been initiated by CIHT, with the publication of its 'Planning for Walking' guidance in 2015 (CD27 – CIHT2015) appearing to have provided an obvious opportunity for replacement acceptable walking distance guidelines to have been introduced. Instead CIHT2015 makes cross references to CIHT2000 in sections 4 and 6, which I consider to be a strong indication that CIHT was of the view that irrespective of the age of its acceptable walking guidelines, they continued to have currency. Mr Wall in giving his oral evidence stated that he was unaware of the CIHT undertaking any current review of CIHT2000.
19. Regardless of a walking trip's purpose the appellant contends that an upper ceiling distance of 2.4 Km (1.5miles) should be used. However, setting such a distance is inconsistent with what is stated in CIHT2000 and the average walking trip lengths reported in the NTS2018 and I therefore consider it should be treated with some caution. The wider disagreement about the overall number of pedestrian movements that would be generated is something I shall return to in providing my reasoning for the second main issue. However, in the context of the consideration of the utility of route A, I consider that the walking trips of most significance would be those to and from Cams Hill Secondary School (the school) and the Cams Hall employment site (CHes). That is because the school and the CHes would or would very nearly meet the 2,000 metre preferred maximum distance guideline for walking journeys for schools and commuting stated in CIHT2000.
20. As it is highly unlikely that route C would be used to get to or from either the school or the CHes, there is no need for me to make any further reference to it in considering this main issue.
21. The parties are now agreed that the development would generate 35 or 36 pedestrian crossings of the Downend Road bridge per day, an increase of between 83% and 86% on the present situation<sup>6</sup>. Of the new crossings there is agreement that 24 would be for the purpose of travelling to and from the school. However, unlike the Council, the appellant contends that no use of route A would be made by commuters walking to or from a place of work<sup>7</sup>.
22. There is some disagreement as to whether the CHes would be 2,000 or 2,100 metres from the development. I consider that a 100 metre (5%) difference would not act as a significant deterrent for pedestrians using route A. That is because the time to walk an extra 100 metres would not be great and for a walker using either routes A or B and it would probably be necessary to time the duration of the alternative walking trips to be aware of any meaningful difference between them. Having walked routes A and B, and presuming that a safe pedestrian crossing for the Downend Road railway bridge would be available, I consider that qualitatively there would be very little to differentiate route A from B. I also consider there would be potential

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<sup>6</sup> Page 5 of CD10A

<sup>7</sup> In the zero entry against commuting/business trips in the upper table and supporting text on page 3 of CD10A and in Tables 10 and 11 included in Appendix C to Mr Wall's PoE

for commuters walking between the development and the CHes to vary their routes, to avoid monotony, and to use either route A or B. I am therefore not persuaded that route B would automatically be favoured ahead of route A by those walking to and from the CHes.

23. So, unlike the appellant, I consider it incorrect to discount commuters from walking to or from CHes via route A. I therefore consider that there would be potential for more pedestrian use of Downend Road railway bridge than has been allowed for by the appellant. I also consider that as there is access to the circular countryside public footpath route just beyond the railway bridge that there would be potential for additional recreational walkers, originating from the existing built up area, to be drawn to Downend Road resulting in some additional crossings of the bridge. That is because the provision of enhanced pedestrian facilities would make it safer to cross the bridge and the bridge's existing condition may well be acting as a detractor for recreational walkers.

The five options considered at the application stage for altering the Downend Road railway bridge

24. To accommodate additional pedestrian crossings of the railway bridge in Downend Road there is no dispute that alterations would need to be made to this bridge. That is because the existing bridge only provides a very rudimentary refuge for pedestrians, in the form of a very narrow margin, tantamount to a 'virtual footway', that comprises a strip of tarmac demarcated by a white painted line.
25. To address the additional demand for pedestrian crossings of the bridge the appellant when the appealed application was originally submitted put forward three options for alterations (options 1 to 3). Option 1 would involve the introduction of a formalised virtual footway and has been discounted by Hampshire County Council (HCC). Option 2 would involve the provision of a 1.2 metre wide traditional (raised) footway, with a carriageway width of around 4.8 metres. Option 3 would involve the provision of a 2.0 metre wide footway and a reduction in the width of the carriageway to form a single lane of 3.5 metres and would involve the introduction of a shuttle working arrangement, with the signed priority being in favour of the eastbound stream of traffic. HCC in offering its advice to the Council<sup>8</sup> expressed no preference for either options 2 or 3, with it stating that the final decision on which option should be pursued being deferred until a post planning permission public consultation exercise had been completed.
26. Following the decision of the Council's planning committee to defer the determination of the appealed application in order to enable further consideration to be given to the alteration of the railway bridge, two further options were put forward by the appellant. The first of those, option 4, would be similar to option 3, albeit than in substitution for signed priority vehicles would be controlled by traffic signals. HCC are reported as raising no in principle concern with option 4, albeit it indicated that this option would entail greater driver delay, including unnecessarily during off peak periods, and a maintenance liability, such that options 2 and 3 remained preferable to the highway authority<sup>9</sup>.

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<sup>8</sup> Letter of 29 August 2018 (contained within CD2)

<sup>9</sup> Paragraph 3.2.6 in the i-Transport Technical Note of 28 February 2019 and entitled 'Downend Road Railway Bridge – Review of Pedestrian Options' (CD29)

27. Option 5 would involve no footway provision, with the carriageway available to vehicles crossing the bridge travelling in opposite directions at the same time being 5.0 metres. There would also be 300mm wide margins to protect the parapets on each side of the bridge<sup>10</sup>. Additionally, traffic signals would be installed so that when pedestrians sought to make a bridge crossing they would initiate an all red phase for both eastbound and westbound drivers, making the bridge a pedestrian only area for so long as pedestrians were crossing it. HCC are reported as considering option 5 to be a unique and unsafe means for controlling shuttle working at the bridge and rejected it (CD2<sup>11</sup>). However, HCC's advice to the Council concerning Option 5 appears to have been on the basis that it would involve shuttle working, as opposed to two way working. In this regard HCC is reported as commenting:

*'As such drivers unfamiliar with the site may not expect opposing vehicles to be on the bridge at the same time (both directions on a green signal). This situation is exacerbated by the carriageway width on the bridge which in this controlled situation would encourage drivers to take a more central position in the carriageway. Consequently vehicles may meet each other on the bridge'.* (Appendix 2 of committee report of 24 April 2019 [CD2])

However, HCC's comments regarding option 5 appear to have been made on an erroneous basis, with it having put forward as an alternative to shuttle working. It is therefore unclear what HCC's views on option 5 would have been had it not been treated as being an 'unconventional arrangement'<sup>12</sup>, given its apparent misunderstanding about what this option would entail. It would also appear that the appellant did nothing to bring this misunderstanding to HCC's attention.

28. The Council's determination of the planning application was therefore based on options 2 and 3 being for its consideration and it contends that option 2 would be unsafe for pedestrians, while option 3 scheme would unacceptably affect the safety and convenience of road users. I now turn to the detailed consideration of options 2 and 3.

#### Option 2

29. The railway bridge provides poor facilities for pedestrians crossing it. I recognise that in general terms the provision of a 1.2 metre wide footway on the Downend Road bridge under option 2 would represent an improvement in safety terms compared with the prevailing situation, however, I consider that cannot reasonably be said of the post development situation. That is because the development would be a significant new generator of vehicles crossing the bridge, with the parties agreeing that the development would give rise to a 22% increase in traffic flows on the bridge<sup>13</sup>. Those extra bridge crossings is something that needs to be accounted for when considering whether option 2 would provide a safe environment for the existing and prospective pedestrian users of the bridge.

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<sup>10</sup> As clearly depicted in the cross section contained in Image 3.2 and drawing ITB12212-GA contained in CD29

<sup>11</sup> The summary of HCC's comments to the Council included as Appendix 2 of the Council's committee report of 24 April 2019

<sup>12</sup> Paragraph 3.3.6 in CD29

<sup>13</sup> Page 5 of CD10A

30. I am of the view that a 1.2 metre wide footway under option 2 would not provide a safe bridge crossing facility for pedestrians, having regard to both the increases in vehicular and pedestrian crossings of the bridge, with the development being a new origin/destination for both categories of travellers, particularly during the peak hours for the making of commuting trips and/or school journeys. It is also likely that the pedestrians using the bridge would be likely to be a mixture of adults and school aged children. Given that the demand for additional bridge crossings would largely come from commuters and school children, I consider that activity would be more likely to coincide with AM and PM peaks and would not be evenly spread throughout the day. In saying that I recognise that working hours can be staggered and out of teaching hours' activities occur at schools, but those activities would only give rise to some walking trips for occupiers of the development outside the core peak hours.
31. Having regard to the guidance on footway widths stated in the Department for Transport LTN1/04 'Policy, Planning and Design for Walking and Cycling'<sup>14</sup> and Manual for Streets (MfS - CD23), a footway of 1.2 metres width would be considerably narrower than the generally preferred minimum 2.0 metres referred to in paragraph 6.3.22 of MfS. While the guidance is not expressed in absolute terms the footway to be provided as part of option 2 would potentially be used by a variety of pedestrians, ie adults, children, with or without any impairment. However, a footway of 1.2 metres in width would only just be wide enough for an adult and a child to walk side by side, but would not accommodate two adults with a push chair walking side by side in the same direction or an adult and a wheelchair user side by side, based on the details provided in figure 6.8 of MfS.
32. Regard also needs to be paid to pedestrians travelling in opposite directions wishing to cross the bridge at the same time. In that regard I recognise that as far as pedestrians travelling from or to the development in the peak hours are concerned the bulk of those users would be travelling in the same direction and that this demand for the footway's use would not generate opposing movements. However, there are already users of the bridge and many of them will be making trips across the bridge in the opposite direction to pedestrians leaving or returning to the development. There would therefore be potential for opposing crossings of the bridge to be made at the same time, creating a conflict situation. I consider it cannot be assumed that when directional conflicts arose that one party would give way to the other and with such a narrow footway that would make the use of the carriageway a possibility, bringing pedestrians into conflict with vehicles.
33. Under the prevailing situation, I observed cars frequently encroaching beyond the centre line on the bridge whether there were or were not any pedestrians on the bridge. My seeing cars crossing over the centre line irrespective of whether pedestrians are crossing the bridge is also consistent with the screenshot images included in the appellant's evidence, for example those in appendix A of the appellant's Technical Note of 28 February 2019. All of which is also consistent with the advisory road signs on either side of the bridge warning of oncoming vehicles being in the middle of the road.

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<sup>14</sup> Appendix X to Mr Wall's PoE

34. I therefore find difficult to envisage how that driver behaviour would not continue to be replicated with an increased number of vehicular crossings of the bridge, following a reduction in the carriageway width for vehicles under option 2. That in turn could result in eastbound vehicles needing to mount the footway or their nearside wing mirrors encroaching into the space above the footway. So, under a scenario of vehicles crossing in opposing directions at the same time as pedestrians were also making use of the bridge there would be the potential for the safety of pedestrians to be unacceptably prejudiced.
35. The appellant has sought to justify the provision of a 1.2 metre wide footway, on the basis of having undertaken a 'Fruin' assessment, to judge the level of service this footway would afford its users. However, the extract of the paper written by Mr Fruin submitted at the inquiry (ID5<sup>15</sup>) refers to 'channel's (footways) upwards of 1.8 metres (6 feet) in width having been assessed. I therefore consider that the Fruin methodology has very limited applicability to a footway under option 2 that would be two thirds of the width of the footway referred to in ID5. I therefore find this aspect of the appellant's case does not justify the provision of a 1.2 metre wide footway.
36. While other instances of narrow footways at bridges/archways in Hampshire have been drawn to my attention in evidence<sup>16</sup>. However, those examples do not appear to be directly comparable with the appeal proposals and in any event it is the acceptability of otherwise of the latter that I need to consider.
37. I also find it surprising that HCC considers a 1.2 metre wide footway would be appropriate on a road subject to around 6,750 daily vehicle movements, when the appellant is intending the main and secondary estate roads within the development would have 2.0 metre footways<sup>17</sup>.
38. I therefore consider that option 2 should be discounted as an appropriate alteration to the Downend Road railway bridge for safely accommodating the additional pedestrian use of the bridge that would arise from the development.

### Option 3

39. The appellant's modelling of the effect of option 3's operation traffic flows is heavily reliant on the use of the 'ARCADY' software, that software normally being used to assess the operation of roundabouts. In this instance ARCADY has been set up with a 'dummy arm' as a work around to simulate the operation of eastbound priority shuttle working at the railway bridge. Using ARCADY, the appellant has estimated that in the AM peak hour, the average queue length would be 3.3 vehicles amounting to a delay of 23 seconds<sup>18</sup>.
40. I have never previously come across ARCADY being used for any purpose other than modelling the operation of roundabouts. I therefore find it surprising that HCC, in providing its comments to the Council (included in CD2), did not question ARCADY's use in assessing the operation of shuttle working at a bridge. I consider it unsurprising that the Transport Research Laboratory (TRL), as the developers/product owner of ARCADY, has cast significant doubt on the suitability of its model for assessing a scenario such

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<sup>15</sup> Designing for pedestrians a level of service concept

<sup>16</sup> Appendix X of Mr Wall's PoE and ID11

<sup>17</sup> Paragraph 2.4.2 of the Transport Assessment (CD15)

<sup>18</sup> Page 9 of CD10A

as option 3 because of an issue of dealing with `... the lag times once a vehicle is in the narrowing ...'<sup>19</sup>. So, while HCC appears to have voiced no concerns about ARCADY's suitability, I consider that very little weight should be attached to it for the purposes of assessing the effect of option 3 on the safe and free operation of Downend Road. I also consider it of note that TRL has stated that its PICADY modelling tool, which is designed to model the operation of priority junctions, is also unsuitable for modelling option 3, with TRL referring to its TRANSYT traffic signal software as being more suitable<sup>20</sup>, albeit still something of a work around.

41. In response to the limitations of the appellant's modelling of option 3, the Council has used microsimulation software to assess the operational effects of option 3. That software 'Paramics Discovery Version 22' (PDV22) being a microsimulation model that includes a module, introduced around six months ago<sup>21</sup>, and which has a specific module capable of modelling road narrowings<sup>22</sup>. As a worst case the Council's running of PDV22 predicts that during the AM peak period queues of up to 36 vehicles might extend back from the westbound vehicle give way point and result in westbound traffic being delayed by up to 17 minutes<sup>23</sup>.
42. Given the recent introduction of PDV22 its track record is limited and the appellant has raised concerns about the reliability of PDV22. In that regard it has been argued that the Council's running of PDV22 has not been correctly calibrated for the circumstances of option 3 and that its output results cannot be validated. Mr Wall in cross examination contended that PDV22 appears to have been developed without being informed by driver behaviour. However, producing a model that was incapable of replicating driver behaviour would seem a nonsensical exercise for the product supplier. Given that PDV22 has been developed to assess the operation of a highway under the circumstances of vehicles in one flow giving way to an opposing flow of vehicles at a road narrowing, I consider that very little weight should be attached to the proposition that this software had been developed without regard to driver behaviour.
43. Mr Wall is not a 'modelling expert'<sup>24</sup> and has placed some reliance on the findings of a study undertaken by the TRL for the Department of Transport to support his use of ARCADY and to critique the Council's running of PDV22. The findings of the TRL study were reported in 1982 in a paper entitled 'The control of shuttle working on narrow bridges' (TRL712)<sup>25</sup>. To assist with critiquing the running of PDV22 the appellant has engaged a consultancy specialising in microsimulation modelling, Vectos Microsim Limited (Vectos), and a video file of the model runs Vectos has performed, as well as written advice it has given to the appellant, has been submitted as part of the appellant's evidence<sup>26</sup>. In response to the critique of PDV22 the Council has supplemented its evidence through the submission of a video file for its

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<sup>19</sup> Email from Jim Binning of TRL to Mayer Brown of 23 August 2019, included in Appendix RVL4 appended to Mrs Lamont's rebuttal statement

<sup>20</sup> Email from Jim Binning of TRL to Mayer Brown of 9 August 2019, included in Appendix RVL4 appended to Mrs Lamont's rebuttal statement

<sup>21</sup> Mrs Lamont in during cross examination

<sup>22</sup> Matter of agreement stated on page 8 of CD10A

<sup>23</sup> Mrs Lamont's rebuttal statement

<sup>24</sup> Email of 23 September 2019 to the Planning Inspectorate from Mrs Mulliner on the appellant's behalf

<sup>25</sup> Appendix K to Mr Wall's PoE

<sup>26</sup> Appendix P to Mr Wall's Rebuttal Statement, Note from Vectos of September 2019 entitled 'Paramics modelling - comments on Sysra review and Mayer Brown rebuttal', ID12 and ID15

- running of PDV22 and written comments from the software's developer, Systra<sup>27</sup>.
44. For the AM peak period and using PDV22 the appellant estimates that the average westbound queue length would be 6.5 vehicles, with the average delays westbound and eastbound respectively being 43 and 10 seconds<sup>28</sup>.
  45. The disagreement about whether the running of PDV22 has reasonably represented the operation of option 3, essentially revolves around the behavioural response of westbound drivers to the signed priority and whether that response would cause significant queuing and driver delays. In that regard the appellant contends that the signed priority has been modelled too rigidly and would not be reflective of actual driver behaviour. It is therefore argued that the Council's prediction of the severity of the westbound queuing and delay times would be unrealistic. That is because TRL712 records that when signed priority shuttle working is in place drivers that do not have the priority only give some measure of preference to drivers in the opposing stream. That resulting in drivers without the priority experiencing around 65% of any delay, while the opposing drivers experience around 35% of any delay.
  46. While the appellant has sought to attach significant weight to the findings reported in TRL712, this report of study provides very little information about the computer modelling that was performed and the frequency and duration of the observations of driver behaviour that was undertaken at the two bridge locations that were used.
  47. With respect to the computer model referred to in TRL712, were that model to be of wider utility than just perhaps for conducting this study, I would have expected that it would be known to HCC and could have been drawn to Mr Wall's attention during the pre-application and/or application discussions that took place. I say that because within Hampshire road narrowing at bridges/archway is not uncommon, given the examples cited in Mr Wall's evidence and my own observations in determining various unrelated appeals elsewhere in this county. In a similar vein when the previously mentioned email exchange took place between representatives of the TRL and a colleague of Mrs Lamont about software suitability, if the model used in the 1982 study was of utility today then the TRL could have drawn it to the attention of Mrs Lamont's colleague. Instead of that there is reference to the TRL planning to develop new software to model shuttle working. Whatever form the model used in 1982 took, given the advances in computing that have occurred in the last 37 years, it is unlikely it would bare comparison with modern day software.
  48. With respect to the bridge locations used in the 1982 study, in the final paragraph in section 3.2 of TRL712 it is stated that traffic flow rates at the bridges and the proportions of traffic crossing the bridges in each direction were different. Those differences could have had implications for the observed driver behaviour that was used to validate the output from the running of the model used in this study.
  49. In the time since TRL712's publication there have been significant changes in vehicle technology, most particularly in terms of braking and engine

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<sup>27</sup> Mrs Lamont's Rebuttal Statement, including Appendix 3, ID9, ID10 and ID14

<sup>28</sup> Page 9 of CD10A

technology, which have implications for acceleration and deceleration rates. Vehicle performance is now very different and would not necessarily be reflected in the modelling undertaken as part of the 1982 study. I am therefore doubtful as to whether the acceleration rates used for the purposes of a study undertaken in 1982 can be relied upon today.

50. With respect to the observance of priority signage, much has been made of the Council's PDV22 model runs being too cautious, with it being argued that the modelled driver behaviour would be more akin to that of 'strictly enforced' priority in the language of TRL712. However, option 3 would entail the installation of 'give way' lines and signage clearly indicating that drivers should give way to on-coming traffic. That signing arrangement would in effect be very similar to what is found in the case of a side road forming part of a 'priority junction' where give way signage and road markings are in place, which are routinely observed without strict enforcement. I consider normal driver behaviour is to observe the instructions or warnings appearing on traffic signs, whether they be of a prohibitive or warning type.
51. I therefore consider it reasonable to expect that westbound drivers faced with priority give way signage would take heed of that signage and thus approach the bridge with caution and would avoid commencing a crossing if there was any doubt that it could not be completed safely. So, on approaching the give way point and when there were no eastbound vehicles on the bridge, a driver would need to decide whether there would be enough time to complete a crossing of the bridge before encountering a vehicle travelling in the opposing direction.
52. There is some disagreement as to how much time a driver would deem necessary to make a safe crossing of the bridge, with it also being argued that in working out the time needed westbound drivers would also make a calculation as to whether their crossing of the bridge would unreasonably delay an eastbound vehicle's crossing of the bridge. It being argued, in line with findings reported in TRL712, that if a westbound driver decided its actions would delay an eastbound vehicle then the former would not proceed.
53. In terms of the decision making to be made by westbound drivers, I consider the normal behaviour would be to decide whether a crossing could safely be made, with any decision making about whether their actions would cause delay for a driver travelling in the opposite direction only being a secondary concern. That is because while a westbound driver would be able to judge how long they would need to cross the bridge, they would be unlikely to be able to make the calculation when precisely an eastbound vehicle would arrive at the point where its driver would want to commence its crossing and what any delay caused to the driver of the eastbound vehicle would be.
54. I recognise that some westbound 'platooning' would be likely to arise. That is one vehicle or a group of vehicles following immediately behind another/other westbound vehicle/vehicles already crossing the bridge, irrespective of whether there might be an eastbound vehicle waiting to make a crossing of the bridge. However, I consider the number of vehicles making crossings during an individual platooning event would not necessarily be as great as argued by the appellant. That is because there would come a point at which a westbound driver would decide to observe the priority signage, rather than continue a sequence of not observing it, given that being behind a line of

crossing vehicles it would not necessarily be possible to see whether an eastbound vehicle with priority was waiting to make a crossing. So, while some platooning would arise and would have the potential to reduce westbound queuing and delays, I am not persuaded its occurrence and delay reducing potential would be of the significance claimed by the appellant.

55. As I have indicated above there is very limited information contained within TRL712 about the precise nature of the observation of drivers at narrow bridges, ie how many times driver observations were undertaken and how long they were. I therefore have concerns about driver delay under option 3 being applied on the basis of 35% and 65% respectively for drivers with and without the signed priority, as per the finding reported in TRL712. That being something the appellant has done in critiquing the Council's running of PDV22 to arrive at its finding that if this software is used then in the AM peak period the average westbound queuing length would be 6.5 vehicles and the delay would be of the order of 43 seconds<sup>29</sup>. The Council's review of the appellant's running of PDV22 suggests that the average maximum westbound queue length could be around 20 vehicles at 07:50 AM (ID10).
56. However, it appears that an unintended consequence of the appellant's rebalancing of the priority to replicate a 35%/65% delay split, is the build-up of eastbound queuing in the absence of much westbound traffic, as is apparent from the 07:46:25 screenshot contained in ID9B. Additionally, vehicles travelling in opposing directions crossing the bridge at the same time would appear to have arisen, as shown in some of the screenshots contained in ID9B.
57. For all of the reasons given above I am therefore not persuaded that much weight should be attached to the findings reported in TRL712 for the purposes of calibrating or validating runs for either PDV22 or for that matter ARCADY.
58. It is contended that the PDV22 model runs undertaken by the Council have been incorrectly calibrated. However, the review of those runs undertaken by Systra has not highlighted any fundamental errors in the way its model has been built and run on the Council's behalf. I am therefore inclined to attach greater weight to the commentary on the model's running provided by Systra than Vectos. That is because Systra, as software designer, could be expected to know precisely what its model is intended to do and whether its running by a 'client' has been appropriate, when consideration is given to the parameters needed to run the software.
59. While PDV22 is a new model and may well become subject to some refinement as more use is made of it, on the basis of everything put to me in evidence about it, I consider its use is more appropriate to that of ARCADY. That is because PDV22 has been designed to address narrow road situations, ARCADY is intended to model circulatory road movements and the TRL has advised that ARCADY is not an appropriate tool to model the operation of option 3.
60. While the queuing and delays under option 3 predicted by the Council's running of PDV22 may be somewhat exaggerated, I consider no reliance should be placed on the appellant's ARCADY assessments. In practice the effect on the flow of traffic associated with option 3's introduction would be

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<sup>29</sup> Page 9 of CD10A

likely to somewhere between the range of the results yielded by the appellant's and the Council's running of PDV22. That would be likely to result in queue lengths and driver delay exceeding the AM peak period occurrences that HCC found to be unacceptable when it concluded that the traffic light controlled option 4 would be unacceptable, ie mean maximum queuing of nine vehicles and delays westbound and eastbound respectively of 36.8 and 32.4 seconds<sup>30</sup>.

61. On the basis of the evidence before me I consider that the introduction of option 3 would result in unacceptable levels of queuing and delay for vehicular users of Downend Road.
62. The Council contends that the visibility splay falling within land within the appellant's control would be inadequate for drivers turning right from the development's access onto Downend Road. While a visibility splay that would be fully compliant with the most recent guidance, ie that contained in ID6<sup>31</sup>, would encroach onto third party land, that land comprises undeveloped land, including a ditch. It is therefore unlikely that any development would arise within the third party land, so close to the edge of the highway, as to affect the visibility for drivers emerging from the development's access. I therefore consider that there would be adequate visibility for drivers turning right out of the development's access and that 'edging out' type movements would be unlikely to cause any significant conflicts between drivers emerging from the site access and westbound road users approaching to the give way point proposed under option 3.
63. Concern has also been raised that the introduction of option 3 would adversely affect the vehicular access used by the occupiers of 38 Downend Road (No 38). No 38 lies immediately to the south of the railway line and has a double width dropped kerb providing access to this dwelling's off-street parking. The visibility for drivers emerging from No 38 is already affected by the railway bridge's parapet.
64. The works associated with the implementation of option 3 would have some implications for the manoeuvring for drivers turning right from No 38. However, I consider the new situation would not be greatly different to the existing one and introducing a shuttle working layout would have very little effect on the forward visibility for vehicles emerging from No 38 because there would be no alterations to the railway bridge's parapet. Regard also needs to be paid to the fact that in any given day the number of vehicle movements associated with No 38's occupation would be quite limited, given this access serves a single property. I consider it of note that the safety auditing that has been undertaken to date has not highlighted any particular safety concerns for vehicles emerging from No 38's access associated with the design of option 3.
65. I am therefore not persuaded that the introduction of option 3 would have any adverse effect on the use of No 38's access.

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<sup>30</sup> Table 3.1 in CD29

<sup>31</sup> Junction visibility extract from Design Manual for Road and Bridges CD123 Revision 0 (August 2019)

Conclusions on pedestrian access via Downend Road and effects on the operation of Downend Road

66. For the reasons given above I found that the 1.2 metre wide footway to be provided as part of option 2, would not provide a safe facility for its users.
67. Option 3 through the narrowing of the carriageway to 3.5 metres would provide a safe pedestrian route. However, the narrowing of the carriageway would be likely to result in vehicle queuing and delay during the AM peak period. The precise degree of that queuing and delay is the subject of considerable disagreement, with it having proved quite difficult to model. That is because when Mr Wall prepared the original transport assessment (CD15) there appears to have been no readily available software capable of modelling a road narrowing such as that envisaged under option 3. That led to the use of ARCADY, which as I have explained above, I consider cannot be relied upon, not least because the TRL has stated that it is not suited to modelling shuttle working. In connection with presenting its appeal case the Council has used the comparatively new and not widely tested PDV22, the running of which suggests that considerable vehicle queuing and driver delay could be encountered by westbound vehicular traffic.
68. The appellant has sought to persuade me that the results from the Council's running of PDV22 should not be relied on because it has been set up to run with parameters that are exaggerating vehicle queuing and driver delay because the observation of the signed priority by westbound traffic has been too rigid. The appellant's critique of PDV22 in no small measure relies on computer modelling and behavioural observations at narrow bridges undertaken in connection with the TRL712 study dating back to 1982. However, for the reasons I have given above I have significant reservations about how meaningful the findings reported in TRL712 are today.
69. I recognise that the Council's running of PDV22 may have generated unduly pessimistic queuing lengths and delay times. That said I consider more credence can be attached to the Council's running of PDV22 than either the appellant's running of ARCADY or the appellant's modified running of PDV22, the latter understating the reasonable observance of the signed priority that would underpin the functioning of option 3. The degree of vehicle queuing and driver delay would probably be somewhere between levels estimated through the appellant's and the Council's running of PDV22. Given that the scale of the delay may well exceed that which led HCC to believe that a traffic light variant of option 3, ie option 4, should be discounted. I therefore consider that option 4 may well have been prematurely discounted by HCC. That is because HCC accepted option 3 as being a safe and efficient option, based on modelling reliant on the use of ARCADY.
70. Much has been made of HCC being accepting of both options 2 and 3, but as I have said above, I consider those options have pedestrian safety and capacity shortcomings. I am not persuaded, on the evidence available to me, that I should accept that because HCC has raised no objection to options 2 and 3 then either would be acceptable.
71. A fifth option (option 5) that would retain a two-way traffic flow, without a footway being provided or a narrowing of the carriageway, with an all pedestrian zone activated by traffic lights, on demand by pedestrians wishing to cross the bridge, was put forward prior to the appealed application's

determination. However, option 5 appears to have discounted on safety grounds by HCC on the erroneous premise that it would involve the operation of an unusual form of shuttle working. I therefore consider that option 5 may also have been prematurely discounted by HCC because of a fundamental misunderstanding of the way in which it would function.

72. On this issue I conclude that the development with the implementation of option 2 would make inadequate provision for pedestrian access via Downend Road, while the implementation of option 3, in making adequate provision for pedestrian users of Downend Road, would unacceptably affect the operation of this road because of the vehicle queuing and driver delay that would arise. The development would therefore be contrary to the second criterion of Policy CS5 of the Fareham Core Strategy of 2011 (the Core Strategy) insofar as when the development is taken as a whole it would generate significant demand for travel and were option 2 to be implemented it would not provide a good quality walking facility for its occupiers. The development, were option 3 to be implemented, would also be contrary to Policy CS5 (the second bullet point under the third criterion) because it would adversely affect the operation of Downend Road as a part of the local road network.
73. There would also be conflict with Policy DS40 of the Fareham Local Plan Part 2: Development Sites and Policies of 2015 (the DSP) because the implementation of option 3 would have an unacceptable traffic implication.
74. I also consider that there would be conflict with paragraph 109 of the National Planning Policy Framework (the Framework) because the implementation of option 3 in safeguarding the safety of pedestrians would give rise to a residual cumulative effect, vehicle queuing and driver delay, that would be severe for the road network. The development would also not accord with paragraph 110c) of the Framework because the implementation of option 2 would create a place that would not be safe because of the conflict that there would be between pedestrians and vehicles through the provision of an unduly narrow footway within part of the public highway.

#### *Accessibility to services and facilities*

75. The development would be on the edge of Portchester's already quite intensively built up area and it would adjoin an area that is predominantly residential in character. The existing development in the area lies to the south of the M27 and is on either side of the A27 corridor, which essentially follows an east/west alignment.
76. As I have previously indicated there is considerable disagreement about the site's accessibility to local services and facilities by non-private motorised modes of travel. In that regard the appellant is of the view that the development would generate in the region of 650 pedestrian movements per day, while the Council places that figure at a little short of 300 movements. Central to that disagreement is whether the distance there would be between the new homes and places of work and education, shopping, leisure and public transport facilities (the local facilities and services) would be too far as to be accessible by walking trips.
77. Figure T2 in the originally submitted Transport Assessment (page 66 of CD15) identifies where the local services and facilities are relative to the appeal site. Many of those service and facilities are clustered around Portchester's

shopping/district centre. When regard is paid to the various tables within Appendix C of Mr Wall's proof of evidence it is apparent that many of the local services and facilities shown in Figure T2 would be at distances from the development that would exceed the 'acceptable walking distances' referred to in CIHT2000 (CD25).

78. The three proposed pedestrian routes, A, B and C, would variously provide egress and ingress from the development. However, routes A, B and C would be of varying levels of attractiveness. In that regard I consider route C would not be particularly attractive because the section comprising footpath FP117 would be unlit and that would affect its general utility after darkness, particularly for commuters on their return from Portchester railway station. Generally, the use of all three routes would entail walking trips that would exceed the CIHT2000 guidelines for travelling to and from town centres, while the railway stations in Portchester and Fareham would not be within a comfortable walking distances from the development. The access to bus stops in the area would exceed the 400 metre guideline recently reaffirmed by the CIHT in its 'Buses in urban developments' guidance of January 2018 (CD28).
79. So, I think it reasonable to say that the development would fall short of being particularly accessible by transportation modes other than private motor vehicles. In that regard the appellants' estimates for the number of non-private motor vehicle trips may well be quite optimistic. That said this development would be close to many other dwellings in Portchester and the accessibility to local services and facilities would be similar to that for many of the existing residents of the area. Given the existing pattern of development in the area, I consider there would be few opportunities for new housing to be built in Portchester on sites that would be significantly more accessible than the appeal site, something that the maps in Appendix R to Mr Wall's proof of evidence show. In that regard it is of note that the Council is considering allocating this site for development in connection with the preparation of its new local plan.
80. On this issue I therefore conclude that there would not be an unreasonable level of accessibility to local services and facilities for the occupiers of the development by a range of modes of transport. I therefore consider that the development would accord with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP because it would not be situated in an inaccessible location and it would be well related to the existing urban settlement boundary for Portchester.

#### *Effects on the designated habitats*

81. The appellant, the Council and Natural England (NE) are agreed that the development would be likely to have a significant effect on the designated habitats, namely in-combination effects associated with: increased recreational activity in the Portsmouth Harbour Special Protection Area (SPA) and the Solent and Southampton Water SPA; and the increased risk of flooding in the Portsmouth Harbour SPA and Ramsar site and the Solent and Dorset Coast candidate SPA. Additionally, there would be potential for the development to have a significant effect either alone or in combination with other developments arising from nitrogen in waste water being discharged into the designated habitats.

82. Under the provisions of Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended) (the HRs), there is a requirement to undertake a screening assessment to determine whether a development alone or in combination with others would be likely to have a significant effect on integrity of the internationally important interest features that have caused a habitat to be designated. Having regard to the ecological information that is available to me, including the statement of common ground signed by the appellant, the Council and NE (CD13) I find for the purposes of undertaking a screening assessment that this development in combination with others would be likely to have a significant effect on the interest features of the designated habitats through additional recreational activity and the risk of flooding.
83. With respect to the matter of additional nitrogen in waste water being discharged into the designated habitats, I am content, on the basis of the nitrogen balance calculation included as Appendix 4 in CD13, that the development would not give rise to an increased discharge of nitrogen within the designated habitats.
84. Having undertaken a screening assessment and determined that there would be a significant effect on the designated habitats, I am content that mitigation could be provided so that the integrity of the qualifying features of the designated habitats would be safeguarded. The nature of the necessary mitigation has been identified in CD13 and would take the form of the payment of a contribution to fund management measures identified in the Solent Recreation Mitigation Strategy of 2018 and the imposition of planning conditions to avoid the development causing flooding in the area. The necessary financial contribution forms one of the planning obligations included in the executed S106.
85. In the event of this appeal being allowed I consider the imposition of conditions requiring: the incorporation of a sustainable drainage scheme within the development; the implementation of construction environmental management plan that included measures to preclude the pollution of the waters within the designated habitats during the construction phase; and a limitation on water usage for the occupiers of the development would be necessary and reasonable to safeguard the integrity of the designated habitats.
86. I therefore conclude that the development, with the provision of the mitigation I have referred to above, could be implemented so as to safeguard the integrity of the designated habitats. In that respect the development would accord with Policy CS4 of the Core Strategy and Policies DSP13 and DSP15 of the DSP because important habitats would be protected.

## **Other Matters**

### *Housing Land Supply*

87. The Council cannot currently demonstrate the availability of a five year housing supply (5yrHLS), with it being agreed that the current five year requirement is 2,730 dwellings. However, there is disagreement as to what the quantum of the 5yrHLS shortfall is when regard is paid to the supply of deliverable sites for homes, having regard to the definition for 'deliverable' stated in Annex 2 of the Framework. That definition stating to be considered deliverable:

'... sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular: ...  
b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.'

88. The appellant contends that the current deliverable supply of homes is 1,323 dwellings, equivalent to HLS of 2.4 years, while the Council argues that the deliverable supply of homes is 2,544 homes, equivalent to an HLS of 4.66 years<sup>32</sup>.
89. That difference being attributable to the appellant having deducted 1,221 dwellings from the deliverable supply identified by the Council. That deduction being made up of: 761 dwellings associated with large sites without development plan allocations and not benefiting from a planning permission (inclusive of some with resolutions to approve); 100 dwellings on the brownfield register, but with no submitted application; 70 dwellings concerning allocated sites but only with a resolution for approval; 50 dwellings concerning allocated sites without a planning permission; and 240 dwellings forming part of the Welborne allocation that would not be delivered in the five year period because planning permission for that development has not been issued.
90. The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.
91. The development would therefore be capable of making a meaningful contribution to the reduction of the current housing shortfall, with 215 dwellings anticipated to be delivered in the five year period between January 2022 and the end of March 2024<sup>33</sup>.

#### *Heritage effects*

92. The development would be situated within the extended settings for: Portchester Castle, a Grade I listed building and scheduled monument; Fort Nelson, a Grade II\* listed building and scheduled monument; and the Nelson Monument, a Grade II\* listed building. The Castle is situated to the south of the site towards the northern extremity of Portsmouth Harbour. Fort Nelson and the Nelson Monument lie to the north of the site, off Portsdown Hill Road.
93. The designated heritage assets are of significance because of their importance to the military history of the local area. However, I consider the effect of the development on the significance of the heritage assets would be less than

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<sup>32</sup> Having regard to the figures quoted in paragraphs 1.18 and 1.19 in the Housing Land Supply SoCG (CD14)

<sup>33</sup> Table 1 in Mrs Mulliner's PoE

substantial, having regard to the policies stated in section 16 (Conserving and enhancing the historic environment) of the Framework. That is because the development would be read within the context of Portchester's extensive established built up area. Nevertheless, paragraph 193 of the Framework advises '... great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'. The less than substantial harm I have referred to therefore attracts great weight.

### *Planning Obligations*

94. The S106 would secure the provision of 40% affordable housing within the development to accord with the provisions of Policy CS18 of the Core Strategy. To mitigate the development's off-site effects on the operation of the local highway network and demands on local transport infrastructure the S106 includes various obligations that would require contributions to be paid to fund appropriate works. There are also obligations relating to the, the provision of and the payment of maintenance contributions for public open and play space and the payment of a contribution for school facilities in the area. To minimise dependency on private motor vehicle usage amongst occupiers of the development the S106 includes planning obligations that would require the undertaking of improvements to the Cams bridge and implementation of a travel plan.
95. Those planning obligations would address development plan policy requirements and I consider that they would be: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. While the planning obligations are necessary, of themselves there is nothing particularly exceptional about them.

### **Planning Balance and Conclusion**

96. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
97. For the reasons given above I have found that the development with the implementation of the option 2 alteration to the Downend Road railway bridge would make inadequate provision for pedestrian access via Downend Road. I have also found that while the implementation of the option 3 alteration to the Downend Road railway bridge would make adequate provision for pedestrian users of Downend Road, the development would unacceptably affect the operation of this road because of the vehicle queuing and driver delay that would arise. I consider those unacceptable effects of the development give rise to conflict with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP and paragraphs 109 and 110c). I consider that the elements of Policies CS5 and DSP40 that the development would be in conflict with are consistent with the national policy and are the most important development plan policies for the purposes of the determination of this appeal. I therefore consider that great weight should be attached to the conflict with the development plan that I have identified.

98. I have found that the accessibility to local services and facilities by modes of transportation other than private motor vehicles would not be unreasonable. That is something that weighs for the social benefits of the development. The development would be capable of being implemented in a manner that would safeguard the integrity of the off-site designated habitats and in that regard the development would have a neutral effect on the natural environment. In relation to these main issues there would be compliance with some of the development plan's policies. Nevertheless, the conflicts with the development plan that I have identified are of sufficient importance that the development should be regarded as being in conflict with the development plan as a whole.
99. There would be significant social and economic benefits arising from the construction and occupation of up to 350 dwellings, including the short term boost to the supply of market and affordable homes in the Council's area. There would be some harm to the setting of the nationally designated heritage assets in the area, however, I have found that harm would be less than substantial and I consider that harm would be outweighed by the previously mentioned social and economic benefits arising from the development.
100. I am of the view that the unacceptable harm to pedestrian safety and the operation of the public highway that I have identified could not be addressed through the imposition of reasonable planning conditions. I have assessed all of the other material considerations in this case, including the benefits identified by the Appellant, but in the overall planning balance I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
101. I therefore conclude that the appeal should be dismissed.

*Grahame Gould*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

John Litton	Of Queens Counsel instructed by Terence O'Rourke Limited
Tim Wall BA MSc MCIHT CMILT	Associate Partner of i-Transport LLP
Jacqueline Mulliner BA (Hons) BTP (Dist) MRTPI	Director and Head of national planning with Terence O'Rourke Limited

### FOR FAREHAM BOROUGH COUNCIL:

David Lintott	Of Counsel instructed by the Council's legal officer
Vera Lamont BEng MICE FCIHT MCMi	Director with Mayer Brown
Andrew Burgess BA (Hons) MRTPI FRSA	Senior consultant with Adams and Hendry Consulting Limited
Richard Wright	Principal Planner (Development Management)

### INTERESTED PARTIES:

Councillor Nick Walker	Fareham Borough Council
Councillor Roger Price	Fareham Borough Council
Councillor Shaun Cunningham	Fareham Borough Council
John McClimont	Chairman Fareham Society
Brian Eastop	Local Resident
Anne Brierly	Local Resident

## **INQUIRY DOCUMENTS (IDs) SUBMITTED AT OR AFTER THE INQUIRY**

ID1	Mr Lintott's opening submissions on behalf of Fareham Borough Council
ID2	Mr Litton's opening submissions on behalf of the appellant, with appendices
ID3	Statement of Councillor Walker and Councillor Sue Bell
ID4	Statement of Mr McClimont, Chairman of the Fareham Society

- ID5 Article by John Fruin 'Designing for pedestrians: a level-of-service concept'
- ID6 Junction visibility extract from Design Manual for Road and Bridges CD123 Revision 0 (August 2019)
- ID7 i-Transport drawings ITB12212-TR: 001A; 002A; 003A; 006A; and 007A and ITB12212-GA-104A annotated by Mayer Brown
- ID8 Mayer Brown additional statement of facts
- ID9 Vectos Model re-run by Mayer Brown output data and screen shots
- ID10 Queue Assessment Information (including data sheets) from i-Transport, response to rerun of Vectos Model undertaken by Mayer Brown
- ID11 Annotated services/facilities context maps of the footways at bridges/tunnels examples included in Appendix V of Mr Wall's Proof of Evidence
- ID12 Vectos comments on the Downend Road Railway Bridge Paramics Modelling undertaken by Mayer Brown in September 2019 further to the review comments being made by Systra
- ID13 Councillor's Cunningham's speaking note
- ID14 Mayer Brown Video file for the operation of Downend Road Bridge
- ID15 i-Transport Video file for the operation of Downend Road Bridge
- ID16 Mrs Mulliner's speaking note on housing land supply
- ID17 Copies of development plan policies CS4, DSP13, DSP15
- ID18 Final version of list of suggested planning
- ID19 Certificated copy of the executed Section 106 agreement
- ID20 Final version of the Inquiry Position Statement
- ID21 Mr Lintott's written closing submissions on behalf of Fareham Borough Council
- ID22 Mr Litton's written closing submissions on behalf of the appellant



## Appeal Decisions

Inquiry Held on 9-12, 16-19 and 23-25 February 2021

Accompanied site visit made on 13 April 2021

**by I Jenkins BSc CEng MICE MCIWEM**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 8<sup>th</sup> June 2021**

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### **Appeal A Ref: APP/A1720/W/20/3252180**

#### **Land at Newgate Lane (North), Fareham,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Fareham Land LP against Fareham Borough Council.
  - The application Ref. P/18/118/OA, is dated 19 September 2018.
  - The development proposed is demolition of existing buildings and development of up to 75 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure.
- 

### **Appeal B Ref: APP/A1720/W/20/3252185**

#### **Land at Newgate Lane (South), Fareham,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Bargate Homes Ltd. against Fareham Borough Council.
  - The application Ref. P/19/0460/OA, is dated 26 April 2019.
  - The development proposed is demolition of existing buildings and development of up to 115 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure.
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## **Decisions**

1. Appeal A is dismissed and the outline planning permission sought is refused.
2. Appeal B is dismissed and the outline planning permission sought is refused.

## **Procedural matters**

3. In each case, the planning application subject of appeal is in outline, with all detailed matters except access reserved for future consideration. While the application subject of appeal B was with the Council for determination, the scheme was revised with the agreement of the Council by limiting the unit numbers to 'up to 115 dwellings', rather than 'up to 125 dwellings' as identified on the planning application form. The change was supported by amended plans. I have considered the appeal on the basis of the revised scheme and reflected the details in the summary information above.
4. Following the submission of the appeals, the Council's Planning Committee determined on the 24 June 2020 that, were it still in a position to do so,

it would have refused to grant planning permission in both cases. In support of its view, the Council cited 15 reasons for refusal in each case (a)-o)).

The reasons for refusal were the same with the exception of: appeal A reason e), which relates to the loss of best and most versatile agricultural land; and, appeal B reason i) related to the protection and enhancement of Chamomile. Prior to the Inquiry, the Council confirmed that, in each case, 3 of the other reasons for refusal had been satisfactorily addressed: appeal A reasons f), g) and i); and, appeal B reasons e), f) and h).

5. Each of the schemes is supported by a formally completed unilateral undertaking (UU): appeal site A-UUA; and, appeal site B-UUB, which seek to secure a number of financial contributions, Affordable Housing and sustainable travel measures. In addition, the appellants have provided a unilateral undertaking related to off-site mitigation for the loss of a low use Solent Wader and Brent Goose site (UUC). I have taken those UUs into account.
6. Reasons for refusal j) and k) relate to the absence of appropriate measures to mitigate likely adverse effects on the integrity of European Protected Sites. The appellants and the Council are content that those matters have now been satisfactorily addressed by mitigation measures secured by the unilateral undertakings. Nonetheless, there is no dispute that if I were minded to allow the appeals, I would need to re-consult Natural England and undertake an Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017*.
7. Reasons for refusal k)-o) relate to the absence of legal agreements to secure other necessary mitigation measures. However, the Council now considers that those reasons have been satisfactorily addressed by the submitted UUs or could be addressed through the imposition of suitable conditions.
8. Insofar as appeal A reason for refusal h) and appeal B reason for refusal g) relate to the capacity of the Newgate Lane East junction with Newgate Lane, the Council withdrew<sup>1</sup> that aspect of its case before the appellants presented their evidence on the matter<sup>2</sup>. Therefore, I have not considered it further.

### **Main Issues**

9. I consider that the main issues in these cases are: the effect of the proposals on the character and appearance of the area; the effect on highway safety; whether, with reference to accessibility, the schemes would be sustainably located; the effect on the spatial development strategy for the area; and, the effect on housing land supply.

### **Reasons**

10. Appeal site A comprises 3.95 hectares of agricultural land, which is bounded by a small area of agricultural land to the north, Newgate Lane to the west and Newgate Lane East to the east. The site shares a small proportion of its southern boundary with Hambrook Lodge and the remainder is shared with appeal site B. The appeal A proposal would involve the development of up to 75 dwellings within the site as well as other associated works. Appeal site B comprises 6.1 hectares of agricultural land, which is bounded by Woodcote Lane to the south, Newgate Lane to the west and Newgate Lane East to the

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<sup>1</sup> Including the evidence given by Mr Whitehead.

<sup>2</sup> Inquiry document no. 23.

- east. Part way along its length, the northern boundary of the site wraps around the western, southern, and eastern boundaries of the grounds of Hambrook Lodge. Otherwise appeal site B shares its northern boundary with appeal site A. The appeal B proposal would involve the development of up to 115 dwellings within the site as well as other associated works.
11. Vehicular, cycle and pedestrian access to each site would be provided by an access road leading from Newgate Lane. A pedestrian/cycle route is also proposed from appeal site A through appeal site B to Woodcote Lane, leading to the proposed Toucan crossing of Newgate Lane East and Bridgemary. The proposed Toucan crossing would be funded through the provision of a contribution secured by UUB. The *Statement of Common Ground-Linked Delivery* (SoCGLD) has been agreed between the appellants and the Council. It indicates that it would be possible to ensure that the appeal A scheme cannot come forward independently of the appeal B scheme through the imposition of a Grampian condition, thereby ensuring the provision of those proposed access links.
  12. The appeal sites form part of an area of countryside situated between the urban settlement boundary of Stubbington, to the west, Gosport, to the east and Fareham, to the north. The settlement referred to as Peel Common in the evidence of the main parties is limited to the residential and commercial properties located off Newgate Lane, Woodcote Lane and Albert Road, within the administrative area of Fareham Borough Council (the Council). Under the terms of the Development Plan, Peel Common does not have a defined settlement boundary and it is also situated in the area of countryside that includes the appeal sites. Furthermore, it does not include the 'Peel Common' housing estate located further to the east within Gosport Borough Council's administrative area. The closest urban boundary to the appeal sites is to the east and is associated with a number of areas within Gosport, such as Bridgemary, Woodcot and the 'Peel Common' housing estate. For simplicity, those areas have been jointly referred to in the evidence of the main parties as Bridgemary. I have taken the same approach in these decisions.
  13. Policy CS14 of the *Fareham Local Development Framework Core Strategy, 2011* (LP1) indicates that built development on land outside the defined settlements will be strictly controlled to protect the countryside from development which would adversely affect its landscape character, appearance and function. Policy DSP6 of *the Local Plan Part 2: Development Sites and Policies, 2015* (LP2) indicates that there will be a presumption against new residential development outside the defined urban settlement boundaries (as identified on the Policies Map) and that proposals should not result in detrimental impact on the character or landscape of the surrounding area.
  14. The area of countryside situated between the settlement boundary of Stubbington, to the west, Gosport, to the east and Fareham, to the north also forms part of the Stubbington/Lee-on-the-Solent and Fareham/Gosport Strategic Gap (Fareham-Stubbington Gap), shown on the LP2 Policies Map Booklet. LP1 Policy CS22 indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
  15. However, the Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites.

The reasoned justification for LP2 Policy DSP40 indicates that the Council is committed to delivering the housing targets in the Core Strategy, and so it is important to provide a contingency position in the Plan to deal with unforeseen problems with delivery. To that end, Policy DSP40 indicates that where it can be demonstrated that the Council does not have a five-year supply of land for housing, additional sites, outside the urban area boundary, within the countryside and Strategic Gaps, may be permitted where they meet a number of criteria (the DSP40 contingency). Those criteria are not as restrictive as the requirements of LP1 Policies CS14 and CS22 or LP2 Policy DSP6. To my mind, it follows that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies would be reduced and would be outweighed by compliance with LP2 Policy DSP40.

### ***Character and appearance of the area***

16. Criterion (ii) of LP2 Policy DSP40 requires that the proposal is well related to the existing urban settlement boundaries and can be well integrated with the neighbouring settlement. To ensure that this is the case, the reasoned justification for the Policy indicates that sensitive design will be necessary. The Council and the appellants agree that the existing urban settlement boundary of Bridgemary is relevant in this context. Criterion (iii) of Policy DSP40 requires that the proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the countryside and, if relevant, the Strategic Gaps. In this context the main parties agree that both Bridgemary and Peel Common are relevant neighbouring settlements. The reasoned justification for LP1 Policy CS22, which deals with development in Strategic Gaps, indicates that they do not have intrinsic landscape value but are important in maintaining the settlement pattern. I consider therefore, that the Strategic Gap designation is of little relevance to this particular main issue. I deal with the effect on the Fareham-Stubbington Gap later in this decision.
17. Peel Common would be the closest settlement to both appeal sites. The pattern of built development there is characterised, for the most part, by ribbon development that fronts onto the western side of Newgate Lane, with small spurs eastwards along the southern side of Woodcote Lane and westwards along Albert Road. Along Newgate Lane the ribbon of development only extends northwards to a point just beyond the alignment of the southern boundary of appeal site A on the opposite side of the highway. I consider that the only notable development to the west of appeal site A, on the western side of Newgate Lane, comprises: Peel Common Wastewater Treatment Works, which is set well back from the highway and is screened from view by landscaping; and, Newlands' Solar Farm, which is relatively low profile. Peel Common is described by the *Fareham Landscape Assessment, 2017* (FLA) as an isolated small settlement and, in my view, given its scale, pattern of development and location in the countryside, that is a reasonable assessment.
18. Both appeal sites are divided into an eastern and western section by the River Alver, which runs in a north-south direction through the sites. To the east of the river the land within the appeal sites is predominantly arable and to the west grassland. The latest Illustrative Masterplans submitted in support of the schemes indicate that, in both cases, the proposed dwellings would be clustered on the eastern side of the River Alver and the land to the west would comprise public open space. To my mind, the absence of residential

development from the western sections of the sites would be necessary, due to the environmental constraints associated with the land to the west of the river, and it could be secured by condition. The constraints include areas at high risk of surface water flooding and of particular ecological value.

19. As a result, and in stark contrast to the existing settlement pattern of Peel Common, none of the proposed residential properties would front onto Newgate Lane or be directly accessed from either Newgate Lane or Woodcote Lane. Links between appeal site B and Woodcote Lane would be limited to a pedestrian/cycleway connection. In each case, the main access to the proposed residential areas would comprise a single access road between Newgate Lane and the eastern section of each site. The sections of these roads through the proposed public open space, in the western sections of the sites, would be devoid of roadside development for the reasons set out above, which would further weaken the relationship between the proposed residential areas and the existing settlement. I understand that in terms of dwelling numbers, the appeal B scheme would be larger than the size of the existing settlement of Peel Common and the appeal schemes together would be approximately double its size. I consider that, with particular reference to their size and location, the proposals have not been sensitively designed to reflect the character of the neighbouring settlement of Peel Common, contrary to the aims of LP2 policy DSP40(iii). Furthermore, in my judgement, due to the site constraints, these are not matters that could be satisfactorily mitigated through design at the reserved matters stage.
20. The area of Bridgemarky, which is situated to the east of the appeal sites, is primarily residential in character, with a variety of building styles generally of 1 to 2-storeys in height. A network of roads and footways provides for ease of movement within that residential area and closely integrates it with the much larger urban area of Gosport. The appeal proposals would also be residential in character and proposed buildings of a similar scale could be secured by condition. However, the appeal sites would be set well apart from that existing urban area, beyond agricultural fields and a recreation ground. The most direct access route between them would be along Woodcote Lane, across Newgate Lane East and along Brookes Lane; a route unsuitable for cars. In my judgement, the appeal schemes, whether considered on their own or together would comprise and would be perceived as islands of development in the countryside set apart from the existing urban settlements. They would not amount to logical extensions to the existing urban areas. I consider that, with particular reference to their isolated location, the proposals have not been sensitively designed to reflect the character of the neighbouring settlement of Bridgemarky. Furthermore, they would not be well related to the existing urban settlement boundary of Bridgemarky or well-integrated with it. In these respects, the proposals would conflict with LP2 Policy DSP40(ii) and (iii). In my judgement, due to the location of the sites, these are not matters that could be satisfactorily mitigated through design at the reserved matters stage.
21. In relation to the requirement of Policy DSP40(iii) that any adverse impact on the countryside be minimised, the Council argues that 'minimise' should be interpreted as requiring any adverse impact to be small or insignificant. I do not agree. The aim of the Policy is to facilitate development in the countryside relative in scale to the demonstrated five-year housing land supply shortfall. To my mind, any new housing development in the countryside would be likely to register some adverse landscape and visual effect, and

development of a scale to address a substantial shortfall would be unlikely to register a small or insignificant impact. The Council's approach would make the Policy self-defeating. Given the aim of the Policy with respect to housing land supply, I consider that it would be reasonable to take 'minimise' to mean limiting any adverse impact, having regard to factors such as careful location, scale, disposition and landscape treatment.

22. The Framework places particular emphasis on the protection and enhancement of valued landscapes (in a manner commensurate with their statutory status or identified quality in the Development Plan). It seeks to give the greatest level of protection to the landscape and scenic beauty of designated areas, such as National Parks and Areas of Outstanding National Beauty (AONB). The appeal sites are not the subject of any statutory or non-statutory landscape designations. Nonetheless, *Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA)* by the Landscape Institute and Institute of Environmental Management & Assessment indicates that the absence of a designation does not mean that an area of landscape is without any value and points to landscape character assessments as a means of identifying which aspects of a landscape are particularly valued. Furthermore, insofar as it seeks to minimise any adverse impact on the countryside, I consider that LP2 Policy DSP40 is consistent with the Framework, which seeks to ensure that decisions contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
23. As the planning applications the subject of these appeals are in outline, a full assessment of the landscape and visual impacts of the proposed schemes cannot be carried out at this stage. Nonetheless, the illustrative layout plans indicate that, in each case, the proposed dwellings would be set back from the perimeter of the site beyond relatively narrow areas of landscaping. To my mind, the scope for landscaping would be unlikely to be significantly greater, given the number of dwellings proposed and that it would not be reasonable to seek to use a condition to modify the developments to make them substantially smaller in terms of unit numbers than that which was applied for. In my view, that would amount to a change upon which interested parties could reasonably expect to be consulted and would require a new application. Whilst the Design and Access Statements indicate that the proposed buildings may be up to 3-storeys in height, the appellants have indicated that they could be limited to 1-2 storeys, in keeping with the surroundings, through the imposition of conditions and without reducing the numbers of units proposed.

#### *Landscape impact*

24. GLVIA indicates that the assessment of landscape effects involves assessing the effects on the landscape as a resource in its own right. This is not just about physical elements and features that make up the landscape; it also embraces the aesthetic<sup>3</sup>, perceptual and experiential aspects of the landscape that make different places distinctive/valued.
25. Natural England's *National Character Assessment* places the appeal sites within the South Coast Plain National Character Area, the characteristics of which include that the plain slopes gently southwards towards the coast and there are

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<sup>3</sup> CD138 page 84 Box 5.1 'scenic quality...landscapes that appeal primarily to the visual senses', perceptual aspects...perceptual qualities, notably wilderness and/or tranquillity', 'experiential 'evidence that the landscape is valued for recreational activity where experience of the landscape is important'.

stretches of farmland between developed areas. At a county level, the sites form part of the Gosport and Fareham Coastal Plain Landscape Character Area, as identified by the *Hampshire Integrated Character Assessment 2012* (HICA), and within that area part of the Coastal Plain Open Landscape Type.

Its characteristics include, amongst other things, extensive and flat or gently sloping plain, often associated with arable land uses and some of the most densely developed areas in Hampshire have occurred in this landscape.

The HICA informed the *Fareham Landscape Assessment, 2017* (FLA), which was commissioned by the Council to inform emerging Local Plan policy.

26. The FLA identifies the area within which the appeal sites are situated as Landscape Character Area 8 (LCA 8), Woodcot-Alver Valley. LCA 8 forms part of the easternmost extent of the Fareham-Stubbington Gap and is divided into 5 Local Landscape Character Areas (LLCAs). More specifically appeal site A and the majority of appeal site B, with the exception of the strip of land to the west of the River Alver, fall within LLCA 8.1a. This area is generally bounded by Newgate lane to the west, Woodcote Lane to the south, the western edge of Bridgemary to the east and Speedfields Park Playing Fields to the north. Outside of this LLCA, to the west and south are the main residential sections of the Peel Common settlement, which fall within LLCA 8.2: *Peel Common and Alver Valley*, as does the western section of the appeal B site. Newlands' Solar Farm and Peel Common Wastewater Treatment Works, which are sited to the west of the appeal sites, fall within LLCA 7.1: *Fareham-Stubbington Gap*.
27. The FLA comments both on the character of LLCA 8.1a prior to the completion of Newgate Lane East and on the likely implications of that highways scheme.
28. Prior to the completion of Newgate Lane East, the FLA recognises that LLCA 8.1a is not covered by any current national or local landscape designation, its scenic quality is not exceptional and it is affected by some localised intrusion of urban features around its periphery. It indicates that LLCA 8.1a shares the typically flat, low-lying character of the coastal plain landscape and whilst it lacks the very open, expansive character of other parts of the coastal plain (including adjacent land within the Strategic Gap to the west), it nevertheless has a relatively open and large-scale character. More specifically, it is generally devoid of built development (apart from buildings at Peel Farm<sup>4</sup>), retains a predominantly open, rural, agricultural character, and tree belts along its boundaries to the north, east and south give the area a sense of enclosure from surrounding urban areas and contribute to its aesthetic appeal. The FLA indicates that overall, the landscape value of LLCA 8.1a is moderate to high. Furthermore, the FLA identifies that the landscape resource has a high susceptibility to change, as it has very limited capacity to accommodate development without a significant impact on the integrity of the area's rural, agricultural character. Whilst these judgements are not disputed, the Council and appellants disagree over the impact that the construction of Newgate Lane East has had.
29. Regarding Newgate Lane East, the FLA anticipated that as the road corridor would be relatively narrow, unaffected land within the rest of the area should be of sufficient scale to maintain its essentially rural character. In my view, this is the case notwithstanding that the roadside planting, which has the potential to reduce the visibility of the highway and associated fencing, has yet to

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<sup>4</sup> Around Hambrook Lodge.

mature. Furthermore, given the relatively low profile of the road scheme, the openness of the area is largely unaffected. Under these circumstances, I consider that whilst the landscape value of LLCA 8.1a has been reduced by the road scheme to medium, the susceptibility of the landscape to change remains high, rather than low/medium identified by the *Landscape and Visual Impact Assessments* submitted in support of the applications (LVIAs). Support for this judgement is provided by the FLA, which indicates that significant further development in addition to the road scheme would almost certainly have an overwhelming urbanising effect, potentially tipping the balance towards a predominantly urban character. Overall, I regard the sensitivity of the landscape resource within LLCA 8.1a to be medium/high, consistent with the Council's Landscape and Visual Assessment findings, and contrary to the low/medium findings set out in the LVIAs.

30. In both cases, the proposals would replace a significant proportion of the agricultural land within LLCA 8.1a with residential development. Whether single-storey or taller buildings are proposed, the massing of each development would add to the sense of enclosure of this LLCA, greatly diminishing its open character and the duration of the impact would be long term. Considering each scheme on its own, the size and scale of the change, taken together with the existing limited intrusion from surrounding urban influences and the effect of Newgate Lane East, would be sufficient in my judgement to tip the balance towards a predominantly urban character. I acknowledge that the impact would not extend beyond LLCA 8.1 to affect a wider area of landscape. Nonetheless, I judge the magnitude of change as medium and the significance would be moderate to moderate/major adverse, even after mitigation. In my view, the effect would not be as low as the minor/moderate or minor adverse significance of effect identified by the LVIAs, which the appellants suggest would be considered acceptable and would not constitute an overall 'harm' to the landscape.
31. As I have indicated, the only section of the appeal sites that falls within LLCA 8.2 is the western section of appeal site B, the development of which would be constrained by its ecological value. Therefore, I give little weight to the view set out in the FLA regarding LLCA 8.2 that there may be potential for some modest, small scale development associated with the existing built form at Peel Common.
32. I consider overall that the proposals would each cause significant harm to the landscape of the area.

#### *Visual impact*

33. There is no dispute that the area from which the proposed developments would potentially be visible, the visual envelope, would be limited. This is due to a combination of the flat topography of the surroundings and the effects of vertical elements such as neighbouring settlement edges and some tall vegetation. As a result, the visual receptors identified by the Council and the appellants are relatively close to the appeal sites and the associated assessments of visual effects provided by those parties are broadly comparable, finding a number of adverse impacts of moderate or greater significance.
34. As regards the users of Newgate Lane, I consider them to be of medium sensitivity to change, consistent with the position set out in the LVIAs and by

- the Council. However, the proposed development would significantly alter views eastwards. Currently long views can be enjoyed from some vantage points across relatively open countryside, Newgate Lane East being low profile infrastructure, towards the tree lined edge of Bridgemary and the 'big skies' noted by the *Technical Review of Areas of Special Landscape Quality and Strategic Gaps* (2020)(TR). As a result of either appeal scheme on its own, residential development would become a prominent feature in the foreground of such views, notwithstanding the proposed setback beyond an area of open space between the highway and the proposed dwellings. From some vantage points, the long rural view would be interrupted entirely, being replaced by a short suburban view of one of the appeal schemes, which would be likely to break the existing skyline and greatly reduce the sense of space. I regard the magnitude of impact as high and the significance of impact as major/moderate adverse, in common with the Council.
35. The LVIA's did not consider vantage points along Newgate Lane East, which was under construction when the assessments were undertaken. I consider users of Newgate Lane East to be of medium sensitivity to change, in common with users of Newgate Lane. It is anticipated that the proposed buildings would be set back from Newgate Lane East beyond a strip of landscaping, within the sites and along the edge of the highway. Nonetheless, given the likely scale and disposition of the built development, I consider it likely that it would still be visible to some extent from that neighbouring road. In my judgement, when travelling between the built-up areas to the north and south, the respite provided by the surrounding countryside along Newgate Lane East is of notable value. That value would be greatly diminished as a result of either scheme. Both would foreshorten views to the west and tip the balance from a predominantly rural to suburban experience. The magnitude of impact on that receptor would be medium and the significance of impact moderate adverse.
36. Overall, I consider that the significance of the visual impact would be moderate to moderate/major adverse. It would have a significant adverse effect on the appearance of the area.
37. The FLA sets development criteria to be met in order to protect the character and quality of landscape resources, views, visual amenity, urban setting and green infrastructure. Whilst the aim of LP2 Policy DSP40 is to minimise, rather than avoid, any adverse impact, I consider that they are of some assistance when judging the extent to which there would be an impact and whether it can be regarded as being minimised. I acknowledge, that in the context of making some provision for housing land supply in the countryside, it would be unrealistic to expect the open, predominantly agricultural and undeveloped rural character of area LLCA 8.1a to be entirely protected as the FLA suggests. However, the proposals would cause significant harm in that regard. Furthermore, rather than situating the proposed developments to the east of Newgate Lane East, next to existing urban areas, the schemes would amount to the creation of substantial new pockets of urbanising built development within existing open agricultural land.
38. I conclude that, in each case, the proposal would cause significant harm to the character and appearance of the area, having had regard to the location, disposition, likely scale and landscape treatment, each would fail to minimise the adverse impact on the countryside. The proposals would conflict with LP2 Policy DSP40(ii) and (iii).

### **Highway safety**

39. The *Statement of Common Ground on Transport (SoCGT)*, agreed between the Council and the appellants, states it is agreed that the individual and cumulative impacts of the northern and southern sites would have a detrimental impact on the operation of the existing right turn lane priority junction between Newgate Lane and Newgate Lane East. Furthermore, this cannot be mitigated by priority junction improvements and so a signalised junction is proposed.
40. The proposed signalised junction would introduce a flare from 1 to 2-lanes on the northbound Newgate Lane East approach to the junction and a merge back to 1 lane some distance after the junction. Furthermore, the SoCGT indicates, in relation to southbound vehicles seeking to access Newgate Lane from Newgate Lane East across 2 lanes of on-coming traffic, the proposed signal method of control would be the provision of an indicative arrow right turn stage. Under the proposed signalling arrangement, right turn movements from Newgate Lane East into Newgate Lane could occur at three points in the cycle of the signals: firstly, turning in gaps in the free flowing northbound traffic; secondly, during the intergreen period when the northbound flow is stopped and before the Newgate Lane traffic is released; and, then if right turners are still waiting after the cycle, the indicative arrow would be triggered to allow them to turn unopposed. The SoCGT confirms that the appellants are proposing an indicative arrow arrangement rather than the provision of a fully signalised right turn stage, as the latter would operate unacceptably in terms of capacity.
41. The appellants' *Stage 1 Road Safety Audit (RSA)* identifies a potential problem with the proposed right turn lane arrangement, with reference to CD 123 of the *Design Manual for Roads and Bridges (DMRB)*. In the context of right turning traffic movements at signal-controlled junctions, CD 123 indicates that where the 85<sup>th</sup> percentile approach speed is greater than 45 mph, there is an increased risk of accidents between right-turning vehicles seeking gaps and oncoming vehicles travelling at speed. It confirms that where the 85<sup>th</sup> percentile approach speed is greater than 45 mph, right hand turns should be separately signalised. Against that background, the RSA raises the concern that higher northbound vehicle speeds (particularly in off-peak traffic conditions) may mean that gap acceptance by the drivers of right turning vehicles could lead to right-turn collisions or to sudden breaking and shunt type collisions. It recommends that, at detailed design stage, signal staging/phasing should incorporate a separately signalled right-turn into Newgate Lane and that it would be appropriate to measure northbound vehicle speeds to design signal staging and phasing arrangements accordingly.
42. DMRB CA 185 sets out the approach to vehicle speed measurement on trunk roads where existing vehicle speeds are necessary to set the basis for the design of signal-controlled junctions. CA 185 confirms that 85<sup>th</sup> percentile vehicle speeds shall be calculated where designs are to be based on measured vehicle speeds. It is common ground that, whilst this standard is intended for use in relation to trunk roads, in the absence of any other reference, it can be used to guide the measurement of vehicle speeds on other roads, such as Newgate Lane East.
43. The SoCGT identifies 3 speed surveys whose results are relevant to the consideration of northbound speeds on Newgate Lane East. They were

undertaken in: September/October 2018; February/March 2020; and November 2020. All three surveys include measurements undertaken at weekends, contrary to the CA 185 protocol which indicates that speed measurements shall not be undertaken at weekends. Nevertheless, they were not limited to weekend measurements. Each survey included measurements on other days of the week, and I have not been provided with any evidence to show that the 85<sup>th</sup> percentile speeds derived from the surveys are not reasonably representative of the weekdays surveyed. However, the last survey was carried out during a period affected by movement restrictions associated with the coronavirus pandemic and the recorded average flow rates are noticeably lower than those recorded at the same times of day in the other two surveys. I consider that, under these circumstances, greater weight is attributable to the results of the earlier two surveys.

44. CA 185 indicates that a minimum number of 200 vehicles speeds shall be recorded in the individual speed measurement period and speed measurements should be taken outside of peak traffic flow periods. The peak hours identified by the *Transport Assessments* submitted in support of the appeal planning applications are 08:00-09:00 hrs (AM peak) and 17:00-18:00 hrs (PM peak). Whilst CA 185 indicates that non-peak periods are typically between 10:00-12:00 hrs and 14:00-16:00 hrs, I share the view of the Highway Authority (HA) that this does not rule out consideration of other non-peak periods, so long as a minimum number of 200 vehicles speeds are recorded in the individual speed measurement period as required by CA 185. Having regard to the results of the September/October 2018 and February/March 2020 surveys for northbound traffic on Newgate Lane East, in addition to the typical periods identified above, the period from 05:00-06:00 hrs meets these criteria, falling outside of the peak hours and having a recorded average flow greater than 200 vehicles.
45. The September/October 2018 and February/March 2020 survey results record 85<sup>th</sup> percentile speeds in the periods 10:00-12:00 hrs and 14:00-16:00 hrs in the range 41 mph-44.8 mph when a wet weather correction is applied. The upper end of this range being only marginally below 45 mph. In the period 05:00-06:00 hrs the results exceeded 45 mph. CA 185 indicates that where there is a difference in the 85<sup>th</sup> percentile speeds derived from the individual speed measurement periods, the higher value shall be used in the subsequent design.
46. I give little weight to the view of the appellants that the introduction of traffic signals, as proposed, would be likely to result in drivers being more cautious and so reduce their vehicle speeds. Even if that were the case, it is not clear that it would reduce 85<sup>th</sup> percentile speeds in the period 05:00-06:00 hrs to below 45 mph or that this undefined factor should be taken into account in the design. The appellants have suggested that in the absence of any demand over-night, the signals would revert to an all red stage, which would further slow the speeds of vehicles. However, it appears that there would be likely to be demand in the period 05:00-06:00 hrs. Furthermore, the HA has confirmed, for a number of reasons, that is not the way multi-arm junctions are set up on its network. Firstly, for junction efficiency, the signals would be expected to rest on green on Newgate Lane East, allowing traffic to proceed unimpeded on the main arm. Secondly, this approach reduces the likelihood of drivers, who wrongly anticipate that the lights will turn from red to green on their approach,

- proceeding without slowing and colliding with others. In light of the HA's established approach, I give little weight to the appellants' suggestion.
47. I consider that the proposals, which would not include separate signalisation of the right-hand turn, would conflict with CD 123.
48. The operation of the existing priority junction involves some drivers turning right from Newgate Lane East into Newgate Lane across a single northbound lane and there is no dispute that at present the junction operates safely. However, the proposed junction arrangement would give rise to the possibility of right turning vehicles gap-seeking across 2 opposing lanes, a practice which the HA considers would be unsafe. I note that Rule 180 of the *Highway Code* indicates that right turning drivers should wait for a safe gap in oncoming traffic. However, the basis of the HA's concern is that a right turning driver may not be able to see an oncoming nearside northbound vehicle, due to screening by offside northbound vehicles, until it is too late to avoid a conflict. The Rule 180 illustration is of a single opposing lane and it does not grapple with the potential for unsighted vehicles in a two opposing lanes scenario. In support of its concern, the HA has identified other junctions where the frequency of accidents involving right turning vehicles has been reduced by moving from a situation where gap-seeking across 2 lanes is allowed to a fully signalised right turn phase.
49. With respect to the modified junctions drawn to my attention by the HA, I agree with the appellants that, in the absence of data with respect to traffic flows, speeds and percentage of right turners at those other junctions, it cannot be determined that they are directly comparable to the appeal junction in those respects. However, nor can it be determined that they are not. Nonetheless, the improved accident record at those other junctions following the introduction of a fully signalised right turn phase appears to me to support, for the most part, the HA assessment that the practice of gap-seeking across 2 lanes was previously a contributory factor to the incidence of accidents<sup>5</sup>. In relation to this matter, I give greater weight to the assessment of the HA, as it is likely to be more familiar with the historic operation of its network, than that of the appellants' highway witnesses.
50. The appellants consider that an arrangement which allows vehicles turning right across two opposing lanes by gap-seeking is common. In support of that view, they have identified 2 junctions in the area where the HA has not prevented right turning vehicles from crossing 2 lanes without signalling: A27/Ranvilles Lane; and, A27/Sandringham Road. However, the HA has indicated that there is a history of accidents associated with right turn manoeuvres at the A27/Ranvilles Lane junction, the most recent having occurred in 2020, and the junction will be taken forward on the HA's provisional list for safety remedial measures during 2021/2022. The A27/Sandringham Road junction is located close to the point at which the speed limit reduces from 40 mph to 30 mph on the A27. Furthermore, Sandringham Road is a cul-de-sac serving far fewer dwellings than would be the case at Newgate Lane as a result of either of the appeal A or B schemes, and so the number of daily or peak hour right turning movements associated with it would be likely to be much lower than the appeal junction. To my mind, the circumstances associated with these two junctions do not lend support to the appeal schemes.

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<sup>5</sup> Whether a 3-year or 10-year accident record period is considered.

51. The appellants argue that in circumstances where a vehicle is waiting at the proposed junction for an approaching northbound offside vehicle to pass before turning right onto Newgate Lane, it is likely that a nearside vehicle screened from view by that offside vehicle would also have passed when the waiting vehicle starts to cross the lanes. To my mind, that would not necessarily be the case, as it would depend on the degree to which the pair of northbound vehicles are staggered and their relative speeds. Some screened vehicles may be slowing to turn left into Newgate Lane causing a right turning vehicle to pause in the offside lane when that previously screened nearside vehicle comes into view and that would potentially bring it into conflict with other approaching offside vehicles. Furthermore, it is foreseeable that right turning drivers seeking gaps may be faced with a stream of traffic in both opposing lanes and with some variation in approach speeds. A nearside vehicle moving past an offside stream of traffic may be unsighted until a late stage and may be closing the gap faster than the right turning driver had anticipated, leading to conflicting movements.
52. With reference to the appellants' *Transport Assessment Technical Note-Junction Modelling Results (TATN)*, by the 2024 design year, the cumulative impact of each appeal scheme and other developments would be likely to result in a marked increase in the total number of right turning vehicles into Newgate Lane. Furthermore, the appellants' traffic modelling predicts that in the AM peak there would not be any suitable gaps in free-flowing northbound traffic for right turning vehicles to cross. However, the proposed signalling arrangement would not prevent drivers from gap-seeking and they may still attempt to do so, if they thought that they could get across, rather than waiting for the intergreen period or the indicative arrow. The modelling predicts that in the PM peak almost all of the right turning traffic would cross in gaps in free-flowing northbound traffic.
53. Against this background, I share the concern of the HA that right turning vehicles gap-seeking to cross 2 oncoming lanes at the proposed junction poses a far greater risk of collisions than the existing arrangement and a significant risk to highway safety.
54. I conclude that the proposed junction arrangement, whether one or both of the appeal schemes were to proceed, would have an unacceptable impact on highway safety. Furthermore, in my view, this harm could not be reduced to an acceptable level through the imposition of a condition(s). As I have indicated, the Council and appellants agree that a fully signalised right turn stage would operate unacceptably in terms of capacity. The proposals would conflict with LP2 Policy DSP40(v), which seeks to ensure that development would not have any unacceptable traffic implications, and it would not fit well with the aims of LP1 Policy CS5(3) insofar as it supports development which does not adversely affect the safety of the local road network. These Policies are consistent with the Framework, which indicates that development should only be prevented or refused on highway grounds in limited circumstances, including if there would be an unacceptable impact on highway safety. This weighs very heavily against the schemes.

***Sustainably located, with reference to accessibility***

55. LP1 Policy CS15 indicates that the Council will promote and secure sustainable development by directing development to locations with sustainable transport

- options. LP1 Policy CS5 indicates that development proposals which generate significant demand for travel and/or are of high density, will be located in accessible (includes access to shops, jobs, services and community facilities as well as public transport) areas that are or will be served by good quality public transport, walking and cycling facilities. LP2 Policy DSP40(ii) seeks to ensure that proposals are sustainably located adjacent to the existing urban settlement boundaries.
56. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and identifies that this should be taken into account in decision-making. I acknowledge that the appeal sites are in the countryside. However, they are situated in a relatively narrow countryside gap between urban areas, rather than a larger rural area where opportunities for sustainable transport could reasonably be expected to be limited. In any event, consistent with Development Plan Policies CS15, CS5 and DSP40, the Framework also indicates that significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
57. The appeal sites are not near to, but are set well apart from: the western, urban area boundary of Bridgemary, as defined by the *Gosport Borough Local Plan 2011-2029 Policies Map*, which is to the east of the appeal sites on the far side of an area of agricultural land that adjoins the eastern side of Newgate Lane East; and, further from the southern settlement boundary of Fareham, which is defined by the LP2 Policies Map Booklet and is located some distance further north at the edge of HMS Collingwood and Speedfields Park. Peel Common does not have a defined urban settlement boundary. As such, I consider that the sites are not adjacent to any existing urban settlement boundary, contrary to the requirement of LP2 Policy DSP40(ii).
58. I acknowledge that the Council appears to have taken a flexible approach to the 'adjacency' requirement in a number of other cases. However, in the cases drawn to my attention, with the exception of the site to the south of Funtley Road, development has taken place or been approved between the application site and the nearest existing urban settlement boundary. In the case of the site to the south of Funtley Road, it abuts a highway on the opposite side of which is some of that other development and the site boundary is a relatively short distance across undeveloped land from an existing urban settlement boundary. The circumstances are not directly comparable to those in the cases before me, in relation to which the sites would be set further apart across undeveloped land from the nearest existing urban settlement boundary. In any event, each case must be considered primarily on its own merits and in my view, the Council's approach elsewhere would not justify harmful development of the appeal sites. I give little weight to those decisions of the Council. Furthermore, appeal decision Ref. APP/L3625/X/16/3165616 considered adjacency in the context of the relationship between a highway and gates set back from it by around 1 metre. The circumstances are not comparable to those in the cases before me and are of little assistance.
59. I turn then to consider the accessibility of the sites with reference to modes of transport. The *National Travel Survey, 2019* (NTS), identifies, amongst other things, the average trip length and duration in England by all modes of travel for the trip purposes of: commuting; education; personal business; shopping; sport (participate); and, entertainment/public activity. There are a range of

- employment, education, retail, health, sport, and leisure uses well within those average distances and durations of the appeal sites. This indicates that there are likely to be some opportunities for residents of the proposed developments to travel less when compared to the national average journey distances and durations, and in this context, the locations of the appeal sites limit the need to travel. However, the NTS 'all modes of travel' includes, amongst other modes, car travel and so it does not automatically follow that the proposed developments would be served by good quality public transport, walking or cycling facilities.
60. The *Manual for Streets* indicates that walkable neighbourhoods are typically characterised by having a range of facilities within around 800 metres walking distances of residential areas which residents may access comfortably on foot. However, it indicates that this is not an upper limit and walking offers the greatest potential to replace short car trips, particularly those under 2 kilometres. This is echoed by the Department for Transport *Local Cycling and Walking Infrastructure Plans (2017)*, which indicates that for walking, 'the distances travelled are generally...up to 2 kilometres'.
61. The Institute of Highways and Transportation's (now CIHT) *Guidelines for Providing for Journeys on Foot, (2000)* (PfJoF) gives more detailed guidance, setting out, with reference to some common facilities, suggested desirable, acceptable and preferred maximum walking distances which range up to a preferred maximum of 2 kilometres for some facilities. The approach is consistent with CIHT's more recent *Planning for Walking, April 2015* (PFW), which indicates that most people will only walk if their destination is less than a mile away (equivalent to around 1.6 kilometres) and about 80% of journeys shorter than 1 mile are made wholly on foot, the power of a destination determining how far people will walk to get to it. To illustrate the point it indicates that while for bus stops in residential areas, 400 metres has traditionally been regarded as a cut-off point, people will walk up to 800 metres to get to a railway station, which reflects the greater perceived quality or importance of rail services.
62. Having regard to the Department for Transport's NTS (Table NTS0303-2020 update), there have been no significant changes in the average walking trip length in the period 2002-2019. To my mind, this indicates it is unlikely that attitudes towards walking trip length have altered to any great extent since the publication of PfJoF. This is consistent with the position taken by my colleague who dealt with appeal Ref. APP/A1720/W/19/3230015, which related to a site elsewhere, in Portchester. I am content therefore, that the PfJoF guidance on acceptable walking distances is not out of date and it provides a reasonable basis for the assessment of whether, having regard to the locations of the appeal sites, walking can be regarded as a genuine choice of transport modes. In addition, PFW indicates that propensity to walk is not only influenced by distance, but also by the quality of the experience, having regard to factors such as the attractiveness and safety of the route.
63. I note that the Council's position regarding the accessibility of the sites is not based on an objection in relation to that matter raised by the Highway Authority, but rather an assessment undertaken by a planning professional with reference to PfJoF, amongst other things. In my view, it does not follow that the weight attributable to the Council's assessment should be reduced. As reported by the appellants, the PfJoF states it is the task of the professional

- planner or engineer to decide if a lower standard is acceptable in given circumstances.
64. There is no dispute that there are a range of services and facilities within 2 kilometres of the appeal sites. However, to my mind, in the absence of any consideration of the 'power of the destinations' and the quality of the experience that is of little assistance. Applying the PfJoF approach, which reflects the 'power of destination', facilities and amenities within its 'acceptable' walking distances of the southern and linked appeal sites are limited to a primary school, a church, and a recreation ground. Within its 'preferred maximum' walking distances there are additionally a college campus (CEMAST), a limited number of small shops and a pub in Bridgemary, an employment area (HMS Collingwood) and four other schools.
65. However, the appeal sites only fall within the catchment area of one of the five schools, Crofton Secondary School, which is barely within the preferred maximum walking distance. Whilst I understand that Crofton Anne Dale Infant and Junior School, which would serve the appeal sites, is within the maximum walking distances for schools identified by the Department for Education, it falls outside the PfJoF preferred maximum walking distances.
66. Although PFW indicates that in residential areas, 400 metres has traditionally been regarded as a cut-off point, the CIHT's more recent *Buses in Urban Developments, January 2018* (BUD) provides more detailed guidance. It identifies maximum walking distances between developments and bus stops with the intention of enabling the bus to compete effectively with the car and to benefit a wide range of people with differing levels of motivation and walking ability. It recommends a maximum walking distance of 300 metres to a bus stop served by a service which is less frequent than every 12 minutes.
67. The SoCGT indicates that the closest bus stop to the appeal sites is on Newgate Lane East and only the southern site would meet that BUD recommendation. Furthermore, the buses return approximately with a frequency of every 75 minutes in each direction and the first northbound bus in the morning, towards Fareham, departs from the bus stop at 09:12 hrs. Notwithstanding that the bus trip duration to the train station may be shorter than the national average trip time by local bus of 36 minutes, to my mind, the start time and frequency of the service would limit the attractiveness of the service as far as northbound commuters are concerned. Whilst there is a bus stop on Tukes Avenue served by a more frequent service, it is significantly further away from the sites than the maximum walking distance for high frequency services recommended by BUD.
68. The SoCGT indicates that the closer of the 2 appeal sites is some 3.7 kilometres from Fareham Railway Station, a distance well beyond the 800 metres identified by PFW.
69. I note that the PfJoF was one of the documents that informed the accessibility standards set out in the Council's *Fareham Local Plan 2037 Background Paper: Accessibility Study 2018*, the application of which in the cases before me appears not to result in a significant difference in outcome compared with the application of the PfJoF guidance.
70. The appellants have applied a Walking Route Audit Tool to the local walking routes, which assesses the attractiveness, comfort, directness, safety, and

coherence of the routes. Whilst a number of the findings are disputed by the Council, I consider that the current condition of the likely route east of the sites to the limited number of shops and the pub referred to in Bridgemaury is of greatest concern. That walking route would involve crossing Newgate Lane East and walking along Brookers Lane. However, difficulties crossing Newgate Lane East, due to the speed and volume of traffic, would be satisfactorily addressed by the proposed provision of a Toucan crossing, funded by a contribution secured by the UUB. Currently, the character of the initial section of Brookers Lane would be likely to dissuade users, due to a lack of street lighting and the potential for people to conceal themselves from view from approaching walkers in trees along the southern side of the route, giving rise to potential safety concerns. However, I consider that these matters could be satisfactorily addressed through the provision of unobtrusive lighting and fencing along the southern side of the route, which would be unlikely to have a material adverse impact on the character or appearance of the locality and could be secured by condition. I acknowledge that these improvements may be of some benefit to the wider community, not just residents of the appeal sites, to which I attribute limited weight.

71. In my judgement, the quality of local walking routes could be made acceptable. However, applying the PfJoF and more recent BUD guidance on walking distances to destinations, the number and range of facilities and amenities within the ranges identified would be limited. I consider overall that the accessibility of the area by walking would be poor and, for the most part, walking cannot be regarded as a genuine choice of transport mode.
72. The site subject of previous appeal decision Ref. APP/A1720/W/19/3230015, was found to satisfy LP2 Policy DSP40(ii). However, the factors taken into consideration in relation to that matter included, amongst other things, that the site was well related to the existing urban settlement boundary for Portchester and close to many other dwellings in Portchester, and accessibility to local services and facilities would be similar to that for many of the existing residents of the area. Those circumstances are not directly comparable to those in the cases before me. The appeal sites are not well related to an existing urban settlement boundary or close to dwellings within one. Whilst accessibility to local services and facilities would be similar for existing residents of Peel Common, it is a small settlement relative to which each of the appeal schemes would be larger in terms of households. Under the circumstances, I consider that the policy finding of the previous appeal decision is of little assistance in these cases.
73. Within 5 kilometres of the appeal sites, which is a distance commonly regraded as reasonable cycling distance, there is a much greater range and number of services, facilities, amenities, and employment sites. Furthermore, there are shared cycle pedestrian/cycle routes in the vicinity of the appeal sites which would facilitate access by bicycle to the areas to the north, south, east, and west of the sites. I consider therefore that the sites would be served by good quality cycling facilities and cycling could be regarded as a genuine choice of transport modes. However, having regard to the NTS for 2019, in comparison with 250 trips per person per year associated with walking, only 16 trips per person per year were associated with cycling. To my mind, it is likely therefore, that relatively few future residents of the appeal sites would cycle, reducing the weight attributable to this factor.

74. As I have indicated, the bus services available within the maximum walking distances recommended by BUD are very limited and the nearest train station is located well outside the PfJoF preferred maximum walking distance. I acknowledge that the sites would be within reasonable cycling distances of Fareham Train Station and residents could drive there by car. Nonetheless, I consider overall that the sites would not be well served by good quality public transport, the accessibility of the area by public transport would be poor and, for the most part, it cannot be regarded as a genuine choice of transport modes.
75. The Framework indicates that in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be-or have been-taken up, given the type of development and its location. A Travel Plan for each site has been agreed by the HA. However, in my view, it does not automatically follow that the appeal sites would be sustainably located with reference to accessibility. The *Planning Practice Guidance* (PPG) indicates that the primary purpose of a Travel Plan is to identify opportunities for effective promotion and delivery of sustainable transport initiatives, for example walking, cycling, public transport and tele-commuting, in connection with both proposed and existing developments and through this to thereby reduce the demand for travel by less sustainable modes.
76. The proposed Travel Plan measures include, amongst other things, the provision of: information to promote sustainable modes of travel; electric vehicle charging/parking facilities on the sites; a Travel Plan Coordinator as well as contributions towards: the improvement of the Newgate Lane East crossing at Woodcote Lane/Brookers Lane; the provision of shared pedestrian/cyclist infrastructure along parts of the routes between the appeal sites and local schools; and, supporting the use (travel vouchers for residents) and operation of the existing limited bus service in the vicinity of the sites for a number of years. Having regard to these matters, I am satisfied that a number of appropriate opportunities to promote sustainable transport modes have been provided for, in accordance with the aims of LP1 Policy CS15 and the Framework. However, as identified above, I consider that the attractiveness of the existing bus service to commuters would be limited and, in my view, this casts significant doubt over the indicative Travel Plan target which anticipates an increase in bus service use, notwithstanding some provision for travel vouchers.
77. I conclude that the appeal sites would be in a location with some, albeit limited, sustainable transport options and in this respect would accord with LP1 Policy CS15. However, the limitations are such that they would not be in an accessible area, with particular reference to public transport and walking facilities, and I do not regard the sites as being sustainably located adjacent to an existing urban settlement boundary. Insofar as they seek to ensure that development is sustainably located with reference to accessibility, I consider overall that the proposals would conflict with LP1 Policy CS5, LP2 Policy DSP40 and the Framework.

### ***Spatial development strategy***

78. The reasoned justification for LP1 Policy CS22 indicates that gaps between settlements help define and maintain the separate identity of individual

- settlements. It states that Strategic Gaps do not have intrinsic landscape value but are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green infrastructure/green corridors. The Policy indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
79. The appellants place some reliance on the proposed allocation of land for development in the Fareham-Stubbington Gap in the Regulation 18 consultation draft of the emerging *Fareham Local Plan 2036* (LPe). This included allocation HA2 for residential development on land between Newgate Lane East and Bridgemary, within the Fareham-Stubbington Gap. Whilst the Regulation 19 draft of the LPe did not include that allocation, it was based on the assumed imposition of Government's proposals to introduce a new Standard Method, which was not subsequently supported. However, going forward, there is no certainty that the proposed allocation of HA2 will be reinstated by the Council. Furthermore, even if it were, that proposed allocation was the subject of objections at the earlier stage and there is no dispute that the emerging plan is at a relatively early stage towards adoption. Under the circumstances, I give little weight to the possibility that proposed allocation HA2 would form part of the LPe when adopted.
80. The appeal sites fall within the Fareham-Stubbington Gap. The TR indicates that the purpose of this gap is to avoid coalescence between the settlements of Fareham and Bridgemary with Stubbington and Lee-on-the-Solent. Drawing a straight line east-west across the gap between Stubbington and Bridgemary, the appellants have estimated that the appeal schemes would reduce the gap from some 1.6 km to around 1.1 km. However, to my mind, that cross-country approach does not represent the manner in which the gap is likely to be experienced and, as a result, generally understood.
81. Consistent with the TR, I consider that a key vehicle route between the settlements of Fareham and Stubbington from which the Strategic Gap is experienced is along Newgate Lane East (between Fareham and Peel Common Roundabout)/B3334 Gosport Road (between Peel Common Roundabout and Marks Road, Stubbington). Along that route travellers leave behind the urban landscape of Fareham at HMS Collingwood and Speedfields Park and travel to the edge of Stubbington, via Peel Common Roundabout, through an area which includes the appeal sites and is predominantly characterised by undeveloped countryside. The Strategic Gap designation washes over some development, which includes Newlands' Solar Farm, Peel Common Wastewater Treatment Works (WWTW) and the settlement of Peel Common. However, along the route identified, intervening planting prevents the WWTW from being seen and limits views of the low-profile solar farm to glimpses. Furthermore, I consider that, when seen from those highways to the east and south, 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.
82. In each case, the proposals would involve substantial development to the east of Peel Common and, as identified above, it would be sufficient to tip the balance of the character of the area between Peel Common, Bridgemary and Fareham from predominantly rural to suburban. Whilst Fareham, Peel Common and Bridgemary would remain physically separate, the contribution of this area

to the sense of separation provided by the Strategic Gap would be greatly diminished. I acknowledge that the proposals would not materially alter the experience of the Strategic Gap along the B3334 Gosport Road, between Peel Common and development at Marks Road, as they would not be visible from there. However, the appellants have estimated that 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 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.

83. I consider overall that the proposals would cause significant harm to the integrity of the Fareham-Stubbington Gap and the physical and visual separation of settlements, with particular reference to the experience of travellers along the Newgate Lane East section of the Newgate Lane East/B3334 Gosport Road key route, contrary to the aims of LP1 Policy CS22.
84. Furthermore, in my judgement, the impact on the integrity of the Strategic 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 an existing urban settlement boundary and Peel Common were to remain a small, isolated ribbon of development within the gap. The proposals would fail to minimise any adverse impact on the Strategic Gap, contrary to the aim of LP2 Policy DSP40(iii).
85. There is no dispute that the proposals would accord with criterion (i) of LP2 Policy DSP40, being relative in scale to the demonstrated five-year housing land supply shortfall. Turning then to criterion iv), which requires a demonstration that the proposals would be deliverable in the short term. The current tenant of appeal site A has suggested that the formal procedures associated with the surrender of the agricultural tenancy may delay implementation of that scheme. However, based on the timeline and formal procedures for obtaining possession outlined by the appellants, it appears to me that delivery in the short term would be possible<sup>6</sup>. In any event, this matter could be satisfactorily addressed, in relation to both sites, through imposition of conditions that required reserved matters applications to be made within 12 months of the grant of planning permission and the commencement of development within 12 months of the approval of reserved matters, as suggested by the appellants. Under the circumstances, I am satisfied that the proposals would not conflict with criterion iv) of LP2 Policy DSP40. Nonetheless, they would conflict with criteria ii), iii) and v) and I consider overall that each proposal would conflict with LP2 Policy DSP40 taken as a whole.
86. I conclude that each of the schemes, which would conflict LP1 Policy CS22 and LP2 Policy DSP40, would not accord with and would undermine the Council's Spatial Development Strategy.

### ***Housing land supply***

87. The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated

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<sup>6</sup> Michelmores LLP letter dated 20 January 2021 and Lester Aldridge LLP letter dated 3 February 2021.

against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum. Furthermore, having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period. As I have indicated, the Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply. However, they agree on either basis that the shortfall is material and it is not necessary to conclude on the precise extent.

88. A significant proportion of the difference between the supply figures of the Council and the appellants is associated with applications with a resolution to grant planning permission (709 units) and allocations (556 units).
89. In respect of the majority of the sites with resolutions to grant planning permission, which date from 2018, it remains necessary, before planning permission could be granted in each case, for the Council to complete Appropriate Assessment (AA) to establish whether the scheme would have a significant effect upon European Protected Sites. To inform the AA, it is necessary for the developers to demonstrate that their schemes would not increase the levels of nitrates entering the Solent. In order to facilitate that process, in September 2020, the Council established a legal framework through which developers/applicants can purchase nitrate credits associated with land use at Little Duxmore Farm (LDF). However, at the Inquiry, the Council was unsure whether there would be sufficient capacity at LDF to provide mitigation in relation to all the identified sites and whilst it is seeking to secure additional capacity elsewhere, the associated negotiations are not yet complete. Furthermore, since September 2020, only a relatively small number of dwellings have been taken through this process culminating in the grant of planning permission. With respect to the other sites, which together account for over 500 units, I consider that in the absence of favourably completed AAs there is significant doubt about the deliverability of housing within the five-year period on those sites. Furthermore, AA is not the only issue. In a number of the cases, while some progress has been made, necessary planning obligations have yet to be formally secured. This adds to the uncertainty.
90. The Welborne allocation accounts for 450 units included in the Council's assumed supply figure. The site was subject to a resolution to grant outline planning permission for up to 600 dwellings in October 2019, subject to planning obligations being secured. Although the Council expected the planning obligations to be secured pursuant to section 106 of the *Town and Country Planning Act 1990* by the end of the summer 2020, this was not achieved. In December 2020, the developer submitted amended plans for the site. Whilst in January 2021, the Council resolved to grant planning permission for the revised scheme, it would also be subject to planning obligations and a pre-commencement condition would be imposed to ensure that funding had been secured for the improvement of junction 10 of the M27. At the Inquiry, the Council confirmed that whilst funding sources have been identified, not all the necessary agreements are in place to secure the funds. In light of the limited progress made since October 2019 and the outstanding areas of

uncertainty, I consider it likely that housing delivery on that site within the five-year period will fall well short of that assumed by the Council.

91. Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic<sup>7</sup>.
92. The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come.
93. The appellants anticipate that around 123 of the 190 proposed appeal dwellings could be completed within the current five-year period. Against this background, I consider it likely that each of the appeal schemes would make a modest contribution towards reducing the significant shortfall in housing land supply. Having had regard to other appeal decisions drawn to my attention<sup>8</sup>, I give those contributions substantial weight.

### **Other matters**

#### *Planning obligations*

94. Each of the schemes is supported by a formally completed unilateral undertaking: appeal site A-UUA; and appeal site B-UUB. Amongst other things, they include provisions for: a Solent Recreation Mitigation Strategy contribution; on-site open space and play area provision and maintenance contributions; an education contribution; provisions to secure on-site Affordable Housing delivery, sustainable travel measures as well as the implementation of a Travel Plan. UUB also makes provision for: the implementation of a Chamomile Management Plan, for the purpose of conserving the ecological features in the Chamomile and Meadow areas of the site, consistent with the aims of LP2 Policy DSP13; and, a Toucan crossing contribution. Having had regard to the Council's *Community Infrastructure Levy Regulations Compliance Statement, February 2021*, I consider that the UUs would accord with the provisions of Regulation 122 of the *Community Infrastructure Regulations 2010* and the tests of obligations set out in the Framework. Furthermore, I conclude that the infrastructure provisions referred to above would accord with the aims of LP1 Policy CS20.
95. With reference to the ecological assessments submitted in support of the applications, the appellants have indicated that, subject to mitigation measures which would be secured either by the submitted UU's or by condition, the schemes would each provide moderate ecological benefits for the sites, consistent with LP1 Policy CS4 and LP2 Policy DSP13. Furthermore, measures would be incorporated in the design of the schemes to limit energy and water consumption as well as carbon dioxide emissions, which could be secured by condition and would amount to minor environmental benefits, consistent with

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<sup>7</sup> Statements of Common Ground, January 2021 (paragraphs 7.14).

<sup>8</sup> Such as APP/A1530/W/19/3223010, APP/G1630/W/18/3210903, APP/E5900/W/19/3225474, APP/N1730/W/18/3204011 and APP/G1630/17/3184272.

LP1 Policy CS16. I have no compelling reason to take a different view. However, in my judgement, they do not weigh significantly in favour of the schemes, as the benefits would be only moderate/minor and the Framework commonly requires the provision of net gains for biodiversity, minimisation of energy consumption and the prudent use of natural resources.

96. UUC would secure off-site mitigation for the loss of a low use Solent Wader and Brent Goose site. Having regard to the measures secured by UUA, UUB and UUC and with reference to the 'Shadow Habitat Regulations Assessments' submitted in support of the applications, the appellants have indicated that the proposals would not have an adverse effect on the integrity of any European Protected Sites, consistent with the aims of LP2 Policies DSP14 and DSP15, and this would weigh as neutral in the planning balance. These matters are not disputed by the Council.
97. It is common ground that there is an unmet Affordable Housing need in Fareham Borough. The shortfall appears to be sizeable. Looking forward, the Council's adopted *Affordable Housing Strategy (2019)* identifies a need for broadly 220 Affordable Homes per annum over the period to 2036. This can be compared to the delivery of an average of 76 Affordable Homes per annum in the period 2011-2019, well below the need identified for that period by the Council's *Housing Evidence: Overview Report (2017)*. 40% of the proposed dwellings in each case would comprise Affordable Housing, consistent with the requirements of LP1 Policy CS18. Furthermore, I understand that the commercial profits of Bargate Homes Ltd, which is owned by Vivid and has contractual control of both sites, are reinvested in Vivid's wider Affordable Housing Programme. I consider that the proposals would amount to meaningful contributions towards addressing the identified need and the Affordable Housing benefits attract substantial weight in each case.
98. The Council considers that the public open space provision shown on the illustrative masterplans submitted in support of the applications would be sufficient to meet the requirements of LP1 Policy CS21 and I have no reason to disagree. Whilst I acknowledge that the proposed public open space may be of some value to existing local residents, given the accessibility of the countryside thereabouts, I consider that any benefit in that regard would be small and I give it little weight.

*Economic benefits*

99. The Framework gives encouragement to development that would support economic growth. The proposals would be likely to give rise to a range of economic benefits. For example, the appellants have estimated that the proposed households would be likely to generate expenditure in the region of £6.4 million per annum, some of which would be spent locally. Furthermore, the proposals could support an estimated 191 jobs during the three-year build programme and could generate an additional £33.8 million of gross value added for the regional economy during that period. The proposals would help to support the growth of the economy, which has been adversely affected by the current coronavirus pandemic. I give the economic benefits likely to result from the proposals in each case substantial weight.

*Best and most versatile agricultural land*

100. Appeal site B contains land classified as best and most versatile (BMV) agricultural land, which would be lost as a result of the scheme, contrary to the aims of LP1 Policy CS16, which seeks to prevent the loss of such land. However, with reference to the Framework, which indicates that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the economic and other benefits of BMV agricultural land, I consider that LP1 Policy CS16 is unduly onerous. Furthermore, as BMV agricultural land makes up only a very small proportion of the site, I share the view of the appellants that the weight to be given to the loss is very limited.

*Privacy*

101. At present, Hambrook Lodge occupies an isolated position in the countryside, set well apart from other dwellings. In this context the proposed developments on land adjacent to that property would be likely to have some effect on the privacy of the existing residents. However, the elevations of the dwelling that contain the majority of its habitable room windows are set back from the boundaries shared with the appeal sites. I consider that it would be possible to ensure, through careful design and layout of the schemes controlled at the reserved matters stage, that reasonable levels of privacy would be maintained in keeping with the aims of LP1 Policy CS17.

*Community services and facilities*

102. I do not share the concerns raised by a number of residents of the Borough of Gosport that the proposals would adversely affect their community services and facilities. As indicated above, it is likely that spending associated with the schemes would benefit the local economy. As regards facilities, I understand that the appeal sites are not within the catchment area of Gosport schools. Whilst some future residents may wish to use the recreation ground situated to the southeast on the other side of Newgate Lane East, there is no compelling evidence before me to show that the numbers would be large or that such activity would be problematic.

***Planning balance***

103. The Framework indicates, with reference to succinct and up-to-date plans, that the planning system should be genuinely plan-led. For decision making this means approving development proposals that accord with an up-to-date Development Plan without delay. The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites and so in these cases the relevant policy for determining the acceptability of residential development on the site is LP2 Policy DSP40. I consider that each of the schemes would conflict overall with LP2 Policy DSP40. However, in these cases, that is not the end of the matter.
104. LP1 Policy CS2 sets out the housing development needs in the plan period, and Policy CS6 establishes the settlements and allocations to deliver development needs. However, Policy CS2, which pre-dated the publication of the Framework, does not purport to represent an up-to-date Framework compliant assessment of housing needs. The housing requirement set out in the Development Plan has not been reviewed within the last 5 years and so the

five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This generates a higher figure. To my mind, it follows that LP1 Policies CS2 and CS6 are out-of-date. Furthermore, against this background, I consider that the weight attributable to conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6, which place strict controls over development outside settlement boundaries, is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements<sup>9</sup>.

105. Furthermore, as the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, under the terms of paragraph 11 of the Framework it follows that the policies which are most important for determining the appeals are deemed out of date. The Framework indicates that decisions should apply a presumption in favour of sustainable development and, where the policies which are most important for determining the application are out of date, this means granting planning permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole; or, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. This approach is reflected in LP2 Policy DSP1.
106. Under these circumstances, I consider that little weight is attributable to the identified conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6. This is reinforced by my earlier finding that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies would be reduced.
107. LP2 Policy DSP40 is also deemed out of date for the purposes of paragraph 11 of the Framework. However, I consider, for a number of reasons, it does not automatically follow that conflicts with this Policy also attract little weight, contrary to the approach of my colleague who dealt with appeal decision Ref. APP/A1720/W/18/3209865.
108. Firstly, the DSP40 contingency seeks to address a situation where there is a five-year housing land supply shortfall, by providing a mechanism for the controlled release of land outside the urban area boundary, within the countryside and Strategic Gaps, through a plan-led approach. I consider that in principle, consistent with the view of my colleague who dealt with appeal Ref. APP/A1720/W/18/3200409, this approach accords with the aims of the Framework.
109. Secondly, consistent with the Framework aim of addressing shortfalls, it requires that (i) the proposal is relative in scale to the demonstrated supply shortfall and (iv) it would be deliverable in the short-term.
110. Thirdly, criteria (ii) and (iii) are also consistent with the Framework insofar as they: recognise the intrinsic character and beauty of the countryside by seeking to minimise any adverse impact on the countryside; promote the creation of high quality places and having regard to the area's defining characteristics, by respecting the pattern and spatial separation of settlements;

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<sup>9</sup> CDK5-Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37, para 63.

and, seek to ensure that development is sustainably located. They represent a relaxation of the requirements of Policies LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6 in favour of housing land supply. However, I consider that the shortfall in the Framework required five-year housing land supply, which has persisted for a number of years and is larger than those before my colleagues<sup>10</sup>, indicates that the balance they strike between those other interests and housing supply may be unduly restrictive. Under these circumstances, in my judgement, considerable, but not full weight is attributable to conflicts with LP2 Policy DSP40(ii) and (iii).

111. Fourthly, insofar as LP2 Policy DSP40(v) seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications, it is consistent with the Framework and conflict with that requirement would be a matter of the greatest weight.
112. Whilst the proposals would accord with criteria i) and iv), they would conflict with criteria ii), iii) and v), causing significant harm to the character and appearance of the area, having an unacceptable effect on highway safety, they would not be sustainably located with reference to accessibility and they would fail to minimise any adverse impact on the Strategic Gap. I have found that the proposals would conflict with LP2 Policy DSP40, undermining the Council's Spatial Development Strategy. I consider overall that these matters weigh very heavily against each of the proposals.
113. In each case the proposals would provide a mix of housing types and styles. They would make meaningful, albeit modest, contributions towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply. The appeal schemes would also be likely to provide employment opportunities and economic benefits to the area. In these respects the proposals would be consistent with the Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support economic growth. I give those benefits substantial weight. I give little weight to other identified benefits, such as the proposed measures to secure net gains for biodiversity, the minimisation of energy consumption and the prudent use of natural resources. Although I give a number of the benefits substantial weight, in my judgement, it would fall well short of the weight attributable to the harm identified.
114. I consider on balance that, in each case, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits and the schemes would not represent sustainable development under the terms of either LP2 Policy DSP1 or the Framework. In light of these findings, it is unnecessary for me to undertake an Appropriate Assessment. However, if I had done so and a positive outcome had ensued, it would not have affected the planning balances or my conclusions on these appeals.

### **Conclusions**

115. Whilst acknowledging that appeal scheme A would conform with some Development Plan policies, I conclude on balance, with particular reference to LP2 Policy DSP40, that the proposal would conflict with the Development Plan taken as a whole. Furthermore, the other material considerations in this case

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<sup>10</sup> APP/A1720/W/18/3199119, APP/A1720/W/18/3200409

would not justify a decision other than in accordance with the Development Plan. For the reasons given above, I conclude that appeal A should be dismissed.

116. Whilst acknowledging that appeal scheme B would conform with some Development Plan policies, I conclude on balance, with particular reference to LP2 Policy DSP40, that the proposal would conflict with the Development Plan taken as a whole. Furthermore, the other material considerations in this case would not justify a decision other than in accordance with the Development Plan. For the reasons given above, I conclude that appeal B should be dismissed.

*I Jenkins*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

**Mr D Lintott**

Of Counsel

He called

**Mr I Dudley**

BSc(Hons) MICFor CEnv CMLI

**Mr C Whitehead**

BEng CEng

**Mr J Mundy**

MSc IMICE

**Mr N Sibbett**

CEcol CMLI CEnv MCIEEM

**Ms J Parker**

BA(Hons) MA MRTPI

**Mr R Wright** (conditions/obligations)

**Mr N Gammer** (conditions/obligations)

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**H Hudson** (conditions/obligations)

Solicitor

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SYSTRA Ltd

Hampshire County Council

The Landscape Partnership

Adams Hendry Consulting Ltd

Fareham Borough Council

Hampshire County Council

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### FOR THE APPELLANTS:

**Mr C Boyle**

QC

He called

**Mr J Atkin**

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**Mr N Tiley**

ARTPI

**Miss M Hoskins**

BA(Hons) MCIHT

**Mr A Jones**

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**Mr D Weaver**

BA(Hons) MA MRTPI

**Mr C Marsh** (conditions/obligations)

Pegasus Group

Pegasus Group

Red Wilson Associates

Pegasus Group

WYG

Pegasus Group

Pegasus Group

### INTERESTED PERSONS:

**County Councillor P Hayre**

The Crofton Division of Fareham

**Mrs A White**

**Mr A Thomas**

**Borough Councillor J Forrest**

The Stubbington Ward

**Mr B Marshall**

**County Councillor S Philpott**

The Bridgemary Division

**Mrs A Roast**

**Borough Councillor C Heneghan**

The Stubbington Ward

Interested party

Local resident

Local resident

Interested party

Fareham Society

Interested party

Lee Residents' Association

Interested party

## DOCUMENTS

- 1 Letters notifying interested parties of appeals A and B.
- 2 Appeals notification responses
- 3 Councillor Philpott-updated proof of evidence
- 4 Ms Parker-revised appendices to proof of evidence and errata
- 5 Council-opening statement
- 6 Appellants-opening statement
- 7 Councillor Forrest-proof of evidence
- 8 Statement of Common Ground (Transport)
- 9 Fareham Society-updated proof of evidence
- 10 Councillor Philpott-updated proof of evidence
- 11 Mr Thomas-email dated 10 February 2021
- 12 Red Wilson Associates-Delay Tables Summary Note
- 13 Mr Thomas-email dated 11 February 2021
- 14 Gosport Borough Council-Additional submissions regarding the Newgate Lane South Appeals (12 February 2021)
- 15 Community Infrastructure Levy Regulations Compliance Statement (including education contributions email dated 9 November 2020 and Planning Obligations Supplementary Planning Document
- 16 Bargate Homes-Delivery Rate Update, dated 16 February 2021
- 17a Composite masterplan
- 17b Settlement boundaries proximity plan
- 17c Land south of Funtley Road Committee Report Ref. P/18/0067/OA
- 17d Consolidated conditions schedule
- 18 Mrs White-proof of evidence
- 19 Natural England guidance documents and Conservation Objectives.
- 20 Gosport Borough Council-Additional submissions regarding the Newgate Lane South Appeals (12 February 2021)-references included.
- 21 Land south of Funtley Road Committee Report Ref. P/18/0067/OA, dated 18/07/2018.
- 22 Ms Parker- response to Inquiry document 16
- 23 Council's letter withdrawing reason for refusal (h)-appeal A and (G)-appeal B insofar as they relate to the capacity of the junction of old Newgate Lane/Newgate Lane East
- 24 Fareham Society-proof of evidence summary
- 25 Ms Hoskins-Linsig model results, junction layouts note and extract from the Highway Code
- 26 Highway Authority-Note dated 18 February 2021 regarding highway capacity point raised by Gosport Borough Council
- 27 Councillor Philpott-supplementary notes
- 28 Councillor Hayre-proof of evidence
- 29a Mrs White-proof of evidence summary
- 29b Mrs Roast-proof of evidence summary
- 30 Updated Report to inform HRA Stage 1 and Stage 2
- 31 Plan-Gosport Road Fareham Air Quality Management Area 2017 (A)
- 32 Gosport Borough Council Ward Maps-Peel Common and Bridgemary North

- 33 Pegasus-1) Traffic Flows at the old Newgate Lane and Newgate Lane East Junction and 2) 21 and 21A Bus Service
- 34 Birds Unilateral Undertaking-update
- 35 Appeal A-Main Unilateral Undertaking
- 36 Highway Authority-Note in response to new information provided by the appellants under cross examination of Ms Hoskins, Ms Parker-note on settlement terminology and Mr Gammer-updated proofs of evidence.
- 37 Councillor Philpott-email dated 19 February 2021, air quality clarification
- 38 Tetra Tech-Note on Winter Bird Mitigation Area Nitrogen Budget, 23 February 2021
- 39 Council-email dated 23 February 2021, consultation responses
- 40 Council/appellants-Consolidated Conditions Schedule
- 41 Council-Boundary plans related to Brookers Lane
- 42 Pegasus-Newgate Lane East Capacity note
- 43 Ms Parker-Status and weight of Local Plan Evidence Based Landscape Documents
- 44 Mr Sibbett-Note on qualifying features
- 45 Fareham Society-closing statement
- 46 Highway Authority-Note addressing queries relating to the southern site Unilateral Undertaking
- 47 Planning Inspectorate-contaminated land model conditions
- 48 Councillor Heneghan-consultation response, dated 29 October 2018
- 49 Lee Residents Association-Closing statement
- 50a Council/appellants-additional conditions
- 50b Pegasus-scale and density note
- 51 Councillor Heneghan-proof of evidence
- 52a The Civil Engineering Practice-Technical Note on Flood Risk and Discharge Restriction
- 52b Appeal A-Main Unilateral Undertaking-tracked changes
- 53 Pegasus note-Ownership and status of the Brookers Lane shared footway/cycleway between Newgate Lane East and Bridgemary
- 54 Ms Parker-Further advice on the consultation responses to the Fareham Landscape Assessment (FLA)(2017)(CDG15)
- 55 Tetra Tech-Report to inform Habitats Regulations Assessment Stage 1 and stage 2-updated
- 56 Acon Uk-Air Quality note
- 57 Birds Unilateral Undertaking-update (tracked changes)
- 58 Council-closing statement
- 59 Council-email confirmation, dated 25 February 2021, of the red line site boundary drawing numbers for the applications
- 60 Birds Unilateral Undertaking-update
- 61 Appellants-closing statement
- 62 Formally completed unilateral undertakings

**Land South of Romsey Avenue, Portchester**

**PINS Ref: APP/A1720/W/21/3271412 (LPA Ref: 18/1073/FP)**

**Statement of Common Ground: Five Year Housing Land Supply**

*8<sup>th</sup> July 2021*

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**1. Introduction**

- 1.1. This Housing Land Supply (“HLS”) Statement of Common Ground (“SoCG”) has been prepared by Mr Steven Brown (of Wolf Bond Planning), on behalf of the Appellant, Foreman Homes Ltd and Richard Wright on behalf of Fareham Borough Council. It sets out both the agreed and disputed matters having regard to the five year housing land supply position.
- 1.2. This HLS SoCG identifies the requirement to be met during the five year period, the deliverability of the identified components of supply; and the subsequent five year housing land supply positions of the respective parties.

**2. The Agreed Position**

- 2.1. It is common ground that the Council is not able to demonstrate a five year supply of deliverable housing land against the minimum five year requirement for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 2.2. As such, it is common ground that the Council is not meeting paragraph 59 of the NPPF and, by virtue of footnote 7, paragraph 11(d) is engaged unless disapplied by virtue of paragraph 177.
- 2.3. The shortfall will only be rectified if planning approval is given for housing on sites not originally envisaged for housing in the adopted Local Plan Parts 1 and 2 or through plan-led development delivered through the emerging Local Plan.
- 2.4. In the circumstances, the most important, operative policy for determining the acceptability of residential development on the Site is Policy DSP40.

**3. The Housing Requirement and Five Year Period**

- 3.1. It is agreed between the parties that the five year period to be used for the purpose of calculating the five year housing land supply position for this appeal is 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 3.2. In so far as the strategic policies from the Core Strategy and Development Sites and Policies DPD are more than five years old, it is agreed, by operation of paragraph 73 and footnote 37 of the NPPF, that **the housing requirement falls to be measured against the local housing need figure calculated using the standard method.**

- 3.3. A such, the starting point to calculating the five year requirement is the minimum **539 dwelling annual requirement** derived from the application of the Standard Method. This equates to 2,695 dwellings requirement.
- 3.4. However, and as a result of the Housing Delivery Test (“HDT”) results published in February 2021, it is agreed that it is appropriate to apply a 20% buffer to the requirement.
- 3.5. This results in a minimum five year requirement of **3,234 dwellings for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.**

**4. Housing Supply**

- 4.1. The Council maintains it has a five year supply of 2,310 dwellings. This results in a shortfall of 924 dwellings and a supply of 3.57 years.
- 4.2. The Appellant identifies a supply of 600 dwellings. This results in a shortfall of 2,634 dwellings and a supply of only 0.93 years.
- 4.3. The respective positions are summarised in Table 1 below.

*Table 1: Respective Five Year Housing Supply Positions*

	<b>Fareham Borough Council</b>	<b>Appellant</b>
Minimum 5yr Req. 1 Jan 2021 to 31 Dec 2025	3,234	3,234
Deliverable Supply	2,310	600
Extent of Shortfall	-924	-2,634
No. Years Supply	3.57yrs	0.93yrs

- 4.4. The supply differences are set out in **Appendix 1** attached
- 4.5. As set out above, and on either approach, it is agreed that the Council is unable to demonstrate a five year supply of deliverable housing land.

**5. Implications of the Respective Five Year Positions**

- 5.1. The agreed position between the Council and Appellant is that the Council is not able currently to demonstrate a five year supply of deliverable housing land for the period 1st January 2021 to 31st December 2025.
- 5.2. As such, it is common ground between the Council and Appellant that the Council is not meeting paragraph 59 of the NPPF, thus engaging the presumption in favour of sustainable development at paragraph 11(d) of the NPPF unless disapplied by virtue of paragraph 177.
- 5.3. Whilst the Council and Appellant disagree as to the extent of the shortfall, it is nevertheless agreed, on either position, that the shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant. As such it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall.

- 5.4. In the light of the agreement reached between the parties in relation to the significance of the five year housing land supply shortfall, neither party will call their respective witnesses to deal with housing land supply matters unless such evidence is requested by the Inspector. This will save time and resources and will enable a more efficient inquiry process.
- 5.5. This HLS SoCG is signed and dated below.

### **Signatures**

On behalf of the Appellant:



MRTPI (Woolf Bond Planning obo Foreman

Name: Richard Wright MRTPI Fareham Borough Council

Date: 8<sup>th</sup> July 2021

\*\*\*\*\*

## Appendix 1: Site Delivery

The following table sets out the respective positions in relation to the deliverability of the components of supply.

Supply source	Revised Council <sup>1</sup>	WBP	Difference
Outstanding Planning Permissions – Small (104 dwellings) (10% discount)	69	69	0
Outstanding Full Planning Permissions – Large (5+ dwellings)	402	402	0
Outstanding Outline Planning Permissions – Large (5+ dwellings)	296	27 <sup>2</sup>	269
Resolution to Grant Planning Permission – Large (5+ dwellings) (exc Welborne)	742 <sup>3</sup>	0	742
Resolution to Grant Planning Permission – Large (5+ dwellings) (Welborne)	390	0	390
Brownfield Register Sites	276	0	276
Local Plan Adopted Housing Allocations	33	0	33
Windfall	102	102	0
<b>Total</b>	<b>2,310</b>	<b>600</b>	<b>1,710</b>

<sup>1</sup> Supplementary Statement to Newgate Lane East Appeal (3269030)

<sup>2</sup> Sites included in this category by WBP are: Egmont Nurseries, Brook Avenue (8 dwellings); 18 Titchfield Park Road, Titchfield (6 dwellings); east & west of 79 Greenaway Lane (6 Dwellings) and Burridge Lodge (7 dwellings)

<sup>3</sup> Paragraph 5.8 of the Council's Supplementary Statement for Newgate Lane East Appeal indicates that this figure should be 663.

# FAREHAM

## BOROUGH COUNCIL

**TOWN AND COUNTRY PLANNING ACT, 1990**

**SECTION 78 APPEAL**

**WRITTEN REPRESENTATIONS**

**Statement of Case**

**On behalf of**

**Fareham Borough Council**

**(April 2021)**

**Appeal by:** R G O M

**Appeal Site:** Land at 21 Burr ridge Road, Burr ridge, Fareham, SO31 1BY

**Appeal Proposal:** Residential development of 4 self-build dwellings, amenity areas with access off Burr ridge Road (amended scheme to P/18/1252/FP)

**Planning Inspectorate Ref:** APP/A1720/W/20/3264952

**Local Planning Authority Ref:** P/20/1007/FP

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## **Appendices**

Appendix A:	Suggested Conditions
Appendix B:	Committee Report (January 2021)
Appendix C:	Appeal Decision (21 Burr ridge Road)
Appendix D:	Appeal Decision (17 Burr ridge Road)
Appendix E:	Appeal Decision (35 Burr ridge Road)
Appendix F:	Appeal Decision (77 Burr ridge Road)
Appendix G:	Solent Recreational Mitigation Strategy (December 2017)
Appendix H:	Current Housing Land Supply Position (February 2021)
Appendix I:	Natural England Nutrient Neutrality Methodology (2019)

## **1.0 The Appeal Site and its Surroundings**

- 1.1 The appeal site is located within the defined countryside and is not located close to or adjacent to the existing defined urban area. The site is located on the southern side of Burridge Road, which comprises an existing ribbon of residential development that extends westwards on the western side of Botley Road (B3051), which connects Botley (to the northwest) to the settlements of the Western Wards (Locks Heath, Park Gate, Warsash, Sarisbury Green, Whiteley and Titchfield Common) and the M27 to the east and southeast. Burridge is a small village comprising limited services and facilities, formed along the Botley Road.
- 1.2 The appeal site is located in a backland position, to the rear of 23, 25, 27 and 29 Burridge Road, and to the west of 21 and 21a (the annex to 21) Burridge Road. The site is accessed via the existing single track access road serving 21/21a Burridge Road, and is situated between 19 and 23 Burridge Road.
- 1.3 The position of 21/21a Burridge Road (to the immediate east of the site) is situated on an elevated position, and the ground level drops sharply to the west beyond the raised graveled parking area that serves 21/21a Burridge Road. Beyond the slope, the western part of the site is more level, and currently forms the lawned garden area of 21 Burridge Road. The site's boundaries are largely formed by mature trees and hedging, characteristic of the rural nature of the site.
- 1.4 Burridge village contains limited services and facilities, which Swanwick Station located approximately 2.4km away (to the south), and Whiteley Shopping Centre located 2.5km away (to the east).
- 1.5 The appeal site lies within 5.6km of the Solent and Southampton Water Special Protection Area (SPA), where there is a requirement to provide appropriate mitigation against the provision of additional residential development within this area. Additionally, due to the proximity of the site to the Solent and Southampton Water SPA, the Solent Maritime Special Area of Conservation (SAC), the Solent and Dorset Coast SPA, the Portsmouth Harbour SPA and the Solent and Isle of Wight Lagoons SAC (collectively known as the Protected sites around The Solent), there is a requirement to ensure no likely significant effect on the integrity of these sites as a result of the development. Further consideration of these matters is set out later in this report.

## 2.0 Description of Proposed Development

- 2.1 The appeal, submitted as a non-determination of the planning application is in regard to the construction of four large 4 and 5-bed detached chalet bungalows, set in landscaped plots with car parking provision for the individual houses, access roads to serve the new dwellings and 21/21a Burr ridge Road. The scheme is being put forward as self-build dwellings.
- 2.2 The proposal incorporates variations to the four house types, all incorporating 4 to 5 bedrooms within the roof space at first floor level, with kitchen/diners, living room and family rooms at ground floor levels. The dwellings would comprise integral or detached double garages.
- 2.3 The application was registered 8 September 2020 and notification that the appeal had been submitted was received 11 December 2020. Officers presented the application proposal to the Planning Committee on 20 January 2021 for the Committee to agree the reasons for refusal had the Council the opportunity to determine the application. The Planning Committee resolved to refuse the application for the following reasons:

*'The development would be contrary to Policies CS2, CS6, CS14 and CS17 of the adopted Fareham Borough Core Strategy 2011 and Policies DSP1, DSP2, DSP3, DSP6, DSP13, DSP15 and DSP40 of the adopted Local Plan Part 2: Development Sites and Policies Plan, and is unacceptable in that:*

- i. the provision of dwellings in this location would be contrary to adopted Local Plan policies which seek to prevent residential development in the countryside. Further, the development would not be sustainably located adjacent to or well integrated with the neighbouring settlement area;*
- ii. the introduction of dwellings in this location would fail to respond positively to and be respectful of the key characteristics of the area, particularly its predominantly undeveloped, backland location, which would be out of character with the prevailing pattern of development in the area;*
- iii. as a result of the poor layout design, the proposal would result in an excessive distance for refuse/recycling bins to be taken to and from the proposed properties, to the detriment of future residents;*

- iv. *insufficient information has been provided to adequately demonstrate that no harm would be caused to features of ecological importance on and surrounding the site and protected species;*
- v. *the proposal would have likely adverse effects on the integrity of European Protected Sites in combination with other developments due to the additional generation of nutrients entering the water environment and the lack of appropriate and appropriately secured mitigation;*
- vi. *in the absence of a legal agreement to secure such, the proposal would fail to provide satisfactory mitigation of the ‘in combination’ effects that the proposed increase in residential units on the site would cause through increased recreational disturbance on the Solent and Southampton Waters Special Protection Area and the Portsmouth Harbour Special Protection Area.’*

2.5 A copy of the Committee Report which includes the reasons for refusal is attached at Appendix B to this Statement.

### **3.0 Relevant Planning History of the Appeal Site**

- 3.1 Planning permission was refused on this site in April 2019 for the construction of six detached dwellings (Application P/18/1252/FP), and the subsequent appeal was dismissed 21 April 2020 (APP/L1720/W/19/3235706). A copy of the Appeal Decision Notice is attached at Appendix C. Further consideration of this appeal decision is set out later in this report.
- 3.2 However, in addition to the dismissed appeal at this site, it is important to highlight that several planning applications and appeals have also been considered on adjoining and nearby sites along Burr ridge Road, at 17 Burr ridge Road, 35 Burr ridge Road and 77 Burr ridge Road. All these development proposals, set out further below, comprise applications for new residential developments along backland sites from properties fronting Burr ridge Road. However, both 17 Burr ridge Road and 35 Burr ridge Road sought to obtain access from Green Lane (a single unmade track running parallel with Burr ridge Road) to the south of the site.
- 3.2 A refused application and dismissed appeal at 17 Burr ridge Road sought planning permission for a detached two storey dwelling, with attached one-bed tourist unit. The site is located directly south of the appeal site. The application, reference P/17/1321/FP (APP/A1720/W/18/3197659) was dismissed on 14 November 2018 due to the impact the development would have on the rural setting of the site. A copy of the Appeal Decision is attached at Appendix D of this Statement.
- 3.3 A refused application and dismissed appealed at 35 Burr ridge Road sought planning permission for a bespoke semi-subterranean 5-bedroom single storey dwelling on land to the rear of 35 Burr ridge Road. The site is located to the southwest of the appeal site. The application, reference P/18/1331/FP (APP/A1720/W/19/3226088) was dismissed on 11 December 2019 due to the impact the development would have on the character and appearance of the surrounding area. A copy of the Appeal Decision is attached at Appendix E of this Statement.
- 3.4 A refused application and dismissed appeal scheme at 77 Burr ridge Road sought planning permission for a detached two storey dwelling to the rear of an existing gypsy pitch which fronts Burr ridge Road. The application, reference P/17/1514/FP (APP/A1720/W/18/3209865) was dismissed on 18 November 2019 due to backland nature of the proposal, which would be incongruous and therefore harmful to the character of the area. A copy of the Appeal Decision is attached at Appendix F of this Statement.

## 4.0 Local and National Planning Policy

4.1 The revised National Planning Policy Framework was published on February 2019.

### **National Planning Policy Framework 2019**

4.2 The revised NPPF was published February 2019 and updates the 2012 and 2018 policy advice. The overarching purpose of the planning system remains unchanged and sets out in paragraph 7 that it must contribute towards the achievement of sustainable development. The three overarching objectives remain, and set out in paragraph 8 state:

*'a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*

*b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*

*c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.'*

4.3 Paragraph 11 expands further upon this theme stating that plans and decisions should apply a presumption in favour of sustainable. In terms of decision making this is meaning is twofold:

- Approving development proposals that accord with the development plan; and,
- Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

*'the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework when taken as a whole.'*

4.4 Paragraph 79 of the NPPF specifically addresses new dwellings in the countryside stating that:

'Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

- a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
- b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
- c) the development would re-use redundant or disused buildings and enhance its immediate setting;
- d) the development would involve the subdivision of an existing residential dwelling; or,
- e) the design is of exceptional quality, in that it:
  - is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and,
  - would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

4.5 Paragraph 108 sets out that development proposals should ensure that, a safe and suitable access to the site can be achieved for all users, and any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

4.6 As stated above, the presumption in favour of sustainable development is set out in paragraph 11, however, where sites require an appropriate assessment because of the potential impact on habitat sites, the presumption in favour of sustainable development does not apply unless that appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats sites (paragraph 177 states). The impact of the development on the Solent Waters Special Protection Area was a reason for refusal. However, the

impact of the development from recreational disturbance can be readily mitigated in accordance with the Council's Adopted Solent Recreation Mitigation Partnership Strategy (SRMP – attached at Appendix G). It is acknowledged that the appellant has stated in their Statement of Case that they are willing to make the necessary contribution, but no formal agreement has been received to secure this.

- 4.7 In addition, and further to the recreational disturbance issue, the matter of water quality impact and air quality impact has also been highlighted as a significant effect on the protected sites by Natural England. The Council is aware that the appellant has purchased nitrate mitigation credits to address this issue from a re-wilding scheme on the Isle of Wight at Little Duxmore Farm by the Hampshire and Isle of Wight Wildlife Trust.
- 4.8 The Planning Inspectorate in this instance is the competent authority who will need to undertake an appropriate assessment to determine if the mitigation addresses the likely impact. This matter is discussed further later in the Statement.

#### **Fareham Borough Development Plan**

- 4.9 The Fareham Borough Development Plan consists of:
- Fareham Local Development Plan: Shaping Fareham's Future, Core Strategy 2011
  - Fareham Borough Local Plan Part 2: Development Sites and Policies 2015
  - Fareham Borough Local Plan Part 3: Welborne Plan (however, this plan is not relevant to the appeal scheme)

#### **Fareham Local Development Plan: Shaping Fareham's Future, Core Strategy 2011**

- 4.10 The policies that relate to the appeal proposal within this document are:

CS2	Housing Provision
CS6	The Development Strategy
CS14	Development outside Settlements
CS17	High Quality Design

- 4.11 Policy CS2 of the Adopted Core Strategy highlights how the Council will achieve the delivery of housing up to 2016.

- 4.12 Policy CS6 of the Adopted Core Strategy highlights that priority should be given to the reuse of previously development land within the urban area.
- 4.13 Policy CS14 which specifically addresses development outside of the urban settlements stating:

*'Built development on land outside of the defined urban settlements will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Accessible forms of development will include that essential of agriculture, forestry, horticulture and required infrastructure. The conversion of existing buildings will be favoured. Replacement buildings must reduce the impact of development and be grouped with other existing buildings, where possible...'*

- 4.14 Policy CS17 requires proposals to *'respond positively to and be respectful of the key characteristics of the area, including heritage assets, landscape, scale, form, spaciousness and use of external materials'*.

## **Fareham Borough Local Plan Part 2: Development Sites and Policies 2015**

- 4.15 The policies that relate to the appeal proposal within this document are:

DSP1 Sustainable Development  
DSP2 Environmental Impact  
DSP3 Impact on Living Conditions  
DSP6 New residential development outside of the defined urban settlement boundaries  
DSP13 Nature Conservation  
DSP15 Recreational Disturbance on the Solent Special Protection Areas  
DSP40 Housing Allocations

- 4.16 Policy DSP1 addresses the Councils stance on sustainable development echoing that of the NPPF 2012.
- 4.17 Policy DSP2 seeks to ensure that developments should not, individually or cumulatively have a significant adverse impact, by reason of noise, heat, liquids, vibration, light or air pollution on neighbouring development or adjoining land. Policy DSP3 seeks to ensure no unacceptable adverse impact upon living conditions of neighbouring occupiers by way of loss of sunlight, daylight, outlook and/or privacy.

- 4.18 Policy DSP6 clearly states that *'there will be a presumption against new residential development outside of the defined urban settlement boundaries'*.
- 4.19 Policy DSP13 addresses the impact of development on ecology and ecologically sensitive areas.
- 4.20 DSP15 highlights the Solent Recreational Mitigation Strategy.
- 4.21 DSP40 lays out the requirements of the Council in the event that a five year housing land supply cannot be demonstrated. It states that additional housing sites, outside the urban area boundary, may be permitted where all the following criteria are met:
- 'i) The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;*
  - 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 to minimise any adverse impact on the countryside and, if relevant, the strategic gaps,*
  - iv) It can be demonstrated that the proposal is deliverable in the short term; and*
  - v) The proposal would not have any unacceptable environmental, amenity or traffic implications.'*

#### **Residential Car and Cycle Parking Standards Supplementary Planning Document 2009**

- 4.22 This document sets out the key requirements for parking within Fareham Borough.

#### **Design Guidance Supplementary Planning Document 2015**

- 4.23 This document set out the design guidance for the Borough. Page 1 highlights the policy that relates to design. Pages 8 and 9 highlight the material planning considerations when looking at new dwellings.

## 5.0 The Council's Case

5.1 The planning application was considered by the Planning Committee, who agreed that had the Council determined the application, it would have been refused for the following reasons:

*'The development would be contrary to Policies CS2, CS6, CS14 and CS17 of the adopted Fareham Borough Core Strategy 2011 and Policies DSP1, DSP2, DSP3, DSP6, DSP13, DSP15 and DSP40 of the adopted Local Plan Part 2: Development Sites and Policies Plan, and is unacceptable in that:*

- i. the provision of dwellings in this location would be contrary to adopted Local Plan policies which seek to prevent residential development in the countryside. Further, the development would not be sustainably located adjacent to or well integrated with the neighbouring settlement area;*
- ii. the introduction of dwellings in this location would fail to respond positively to and be respectful of the key characteristics of the area, particularly its predominantly undeveloped, backland location, which would be out of character with the prevailing pattern of development in the area;*
- iii. as a result of the poor layout design, the proposal would result in an excessive distance for refuse/recycling bins to be taken to and from the proposed properties, to the detriment of future residents;*
- iv. insufficient information has been provided to adequately demonstrate that no harm would be caused to features of ecological importance on and surrounding the site and protected species;*
- v. the proposal would have likely adverse effects on the integrity of European Protected Sites in combination with other developments due to the additional generation of nutrients entering the water environment and the lack of appropriate and appropriately secured mitigation;*
- vi. in the absence of a legal agreement to secure such, the proposal would fail to provide satisfactory mitigation of the 'in combination' effects that the proposed increase in residential*

*units on the site would cause through increased recreational disturbance on the Solent and Southampton Waters Special Protection Area and the Portsmouth Harbour Special Protection Area.'*

5.2 The five parts of the reason for refusal will be considered separately below.

**(i) Location of Site Contrary to Local Plan Policies**

5.3 This reason for refusal mirrors that of the earlier refused planning application P/18/1252/FP. In respect of part (a) of the reason for refusal, the proposed dwellings would result in additional dwellings in the designated countryside, and whilst the Local Planning Authority does not currently have a 5-year supply of housing, the provision of four dwelling in this rural location would not outweigh the harm on the character of the local area by the provision of this small backland estate. The current position on the Council's Housing Land Supply position was outlined in the Position Statement considered at the February 2021 Planning Committee. The Position Statement is attached at Appendix H. The Council acknowledges that the Appellant is seeking permission for these dwellings as self-build accommodation in order to address the current demand for this type of housing in the Borough. The Council acknowledges the need for self-build housing, as we acknowledge the current shortfall in the 5-year housing land supply.

5.4 The starting point for the consideration of this is Policy DSP40 (Housing Allocation) which applies where the Council cannot demonstrate an up-to-date five year supply of housing sites. The site is located outside and away from the defined urban settlement boundary and therefore lies within the countryside. The Whiteley Urban Settlement is located almost 300m to the east of the site, on the eastern side of Botley Road, to the rear of the houses that form part of the pattern of ribbon development that comprises Burridge. The urban settlement boundary currently comprises the western edge of the higher density residential environment of Whiteley.

5.5 Policy DSP40 of the Local Plan highlights that where the Council does not have a five year supply of land for housing, additional housing sites outside the urban area boundary may be permitted where they meet the five criteria listed below:

- (i) The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;*
- (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 to minimise any adverse impact on the countryside and, if relevant, the strategic gaps,*
- iv) *It can be demonstrated that the proposal is deliverable in the short term; and*
- v) *The proposal would not have any unacceptable environmental, amenity or traffic implications.'*

5.6 All of the above criteria must be complied with to ensure the development adheres to the provisions of Policy DSP40.

5.7 With regard to criterion ii) the site does not lie adjacent to, nor is it well related to an existing urban settlement boundary and as such fails to accord with this criteria of Policy DSP40. Burr ridge as a village has very limited services and facilities, therefore requiring most residents to access local services, such as doctors, shops, cafes, schools and employment by private vehicles. The services and facilities of Whiteley are located approximately 4km away, thereby further than the recommended 2km walking distance, and Burr ridge does not benefit from any regular bus services. The buses along Botley Road comprise school services, operating once in the morning and once in the evening during term time, and a local taxishare service provided by Hampshire Community Transport, which is an on demand, by appointment service. There are no regular frequent bus services, which would therefore require almost all journeys to be undertaken by the private car. The site is therefore in a poorly serviced location, with the even the nearest railway station located over 2km walk away to the southeast of the site. The appeal proposal is therefore contrary to Policy DSP40 (ii).

5.8 The matter of the suitability of the location for development was considered by the Appeal Inspector in 2020, where it was concluded that they considered that there were material considerations that would outweigh the conflict with criteria (ii) of Policy DSP40. However, this in part related to the consideration that Burr ridge was well served by public transport, with the Inspector wrongly highlighting the 'frequent number of buses', which as highlighted above is not correct. Further, despite the site bounded to the east and west by the extensive rear gardens of 19 Burr ridge Road and 35 Burr ridge Road, these area are largely undeveloped and blur into the open undeveloped countryside beyond. Furthermore, to the immediate south of the site is a woodland, which forms part of the wider woodland beyond and to the south of Green Lane.

5.9 Whilst it is acknowledged that the frontage of the site has a more semi-urban character, as you move southwards, the rural character becomes more prominent, and the extensive development of this would erode this, to the

detriment of the site and the wider area, and creating additional pressure on many other extensive gardens along Burr ridge Road. The Landscape Character Assessment highlights the area as being within LCA.13 Burr ridge – Swanwick – Whiteley, in an area characterised by a 'distinctive pattern of small-scale fields...contained by a strong framework of mature hedgerows, trees and blocks of woodland, providing a strong sense of enclosure and seclusion'.

- 5.10 The Assessment continues to describe the area as retaining a more intact and essentially rural character, whilst acknowledging that there may be potential to accommodate some small-scale development in areas of lower sensitivity where landscape character and quality is partly degraded. The landscape character of the site, bounded by largely undeveloped gardens and woodland is not considered to have been degraded, such as by significant elements of residential paraphernalia and domestic fencing, thereby retaining its edge of settlement, semi-rural character.
- 5.11 The development on this site would erode and as such degrade this character and would fail therefore to integrate with the neighbouring ribbon frontage settlement, which coupled with the lack of services and facilities and the relative distance to any formal regular public transport would represent an unsustainable location for new residential development. The Council therefore maintains that the proposal would be contrary to criteria (ii) of Policy DSP40.
- 5.12 Having regard for policies CS2 and CS14 of the Adopted Core Strategy, and DSP6 of the Adopted Local Plan Part 2, the proposal involves residential development outside of the defined urban area which does not have an overriding need for a countryside location. The application is therefore contrary to policies CS2 and CS14 of the Adopted Core Strategy.
- 5.13 Turning to policy DSP6, criteria i) and ii) do not relate to this application. With respect to criterion iii), the proposal does not comprise infilling within a continuous built-up frontage. The appeal represents the siting of new dwellings at the rear of an existing residential site which is contrary to policy DSP6.
- 5.14 The Council therefore consider that the principle of residential development at the site is therefore contrary to policies CS2 and CS14 of the Adopted Core Strategy and policy DSP6 of the Local Plan Part 2 and would represent unjustified residential dwellings in the designated countryside.

**(ii) Impact on the Character of the Area**

- 5.15 The matter of the character of the area has partially been considered in the preceding paragraphs. Burr ridge Road is characterised as a ribbon of

residential dwelling with a predominantly road frontage character, with many of the properties comprising long rear gardens with the open countryside beyond. At the location of the appeal site, the proposed dwelling would be situated behind this ribbon of road frontage properties, accessed via a narrow single gravelled track that currently serves 21 Burr ridge Road, and its annex (21a Burr ridge Road). Beyond the road frontage development along Burr ridge Road, the surrounding area is characterised as open, undeveloped countryside, forming part of the eastern countryside setting of the River Hamble, located approximately 750m to the northwest of the site. The provision of four large detached chalet bungalows, despite being set back from the road, would further erode this character and lead to increased pressure to further extend the realm of built form within this mixed, low density, road frontage ribbon residential character within this countryside location.

- 5.16 Policy CS17 of the Adopted Core Strategy requires proposals to *‘respond positively to and be respectful of the key characteristics of the area, including heritage assets, landscape, scale, form, spaciousness and use of external materials.’* It is the Council’s opinion that despite the provision of the existing single storey backland property at 21 Burr ridge Road, the prevailing character of this part of Burr ridge Road is of open, undeveloped countryside, with only detached road frontage dwellings with gardens extending into the open countryside being the defining characteristic. 21 Burr ridge Road predates many of the other properties that front Burr ridge Road, and despite its backland location, the use of backland development elsewhere along Burr ridge Road has not been replicated.
- 5.17 As such, the key overarching characteristic of Burr ridge Road is of road frontage development, and the appeal proposal fails to accord with this character. The scale of the proposed dwellings, whilst reduced from the earlier refused scheme and whilst set back into the site, the associated activity created by such structures and their presence is considered to be harmful to the key characteristics of this part of Burr ridge Road which is a semi-rural lane.
- 5.18 The impact on the character of the area was also considered by the Appeal Inspector in their Decision in 2020. Paragraph 6 of the Appeal Decision states:
- “Whilst the site would be screened from the main road the introduction of this pattern of development, which would fail to create a positive layout or respect the more varied ribbon style development that dominates the wider area, would be significantly harmful to the character of the area. The fact that the character is semi-urban does not justify the introduction of a cramped and ill-considered layout”.*

- 5.19 The Inspector continued to confirm in paragraph 8 that the development proposal would result in “*significant harm to the character and appearance of the area*”, conflicting with policies CS17 and criteria (iii) of DSP40.
- 5.20 The Council acknowledges that the current appeal proposal is an improvement, in terms of the overall scale of the scheme, design of the dwellings, and their relationship to each other when compared to the earlier proposal. However, as highlighted by the Appeal Inspector, the area is dominated by a varied ribbon style development, and the Council considers that a development such as the appeal proposed, despite its improvements, represents an estate format with short rear gardens, occupying a backland location would be out of keeping and incongruous to the prevailing ribbon frontage character along Burr ridge Road, which as the Appeal Inspector highlights dominates the wider area.
- 5.21 It is also important to highlight that the appeal decision on land to the rear of 17 Burr ridge Road (Appeal Reference: APP/W1720/W/18/3197659), adjacent to the site in respect of a proposed new dwelling on land to the rear of 17 Burr ridge Road was dismissed in November 2018 due to the unacceptable harm to the character and appearance of the area. This appeal decision was also considered at a time where the Council could not demonstrate a 5 year housing land supply position.
- 5.22 Further, the appeal decision for the backland development at 77 Burr ridge Road (Appeal Reference: APP/A1720/W/18/3209865), which the Appeal Inspector highlighted as being bounded by residential development, with outbuilding and other dwellings to the periphery considered that the tandem, backland development of the site would be incongruous and fail to respect the ribbon frontage development of Burr ridge Road, which in part resulted in the appeal being dismissed.
- 5.23 The Council therefore consider that the provision of a backland residential development of four houses in this location would, like the earlier development proposal cause unacceptable harm to the character and appearance of the area, and would therefore be contrary to the advice of policy CS17 of the adopted Core Strategy, and would represent an incongruous, urbanising feature, failing to respect the key characteristics of the area, contrary to criteria (iii) of DSP40.

**(iii) Living Conditions for future occupiers**

- 5.24 The appeal proposal, unlike the earlier scheme includes provision for a bin collection point for the properties, including for 21/21a Burr ridge Road at the site entrance to Burr ridge Road. From the front of 21a Burr ridge Road to the proposed location of the four dwellings is a considerable level change, with a steep slope

down to the proposed development site. There is then a further, gentler slope down from 21a Burrige Road to the road frontage.

- 5.25 Proposed Plot 3, to the southwest corner of the site would be required to drag a wheelie bin in excess of 130 metres from the front of their property to the kerbside at Burrige Road once a week for their refuse and recycling to be collected. The same but marginally shorter distances apply to the other plots. This distance is considerable even if the site were flat, however, the occupiers would be expected to take their full bins up a steep incline before then descending a further slope down to Burrige Road.
- 5.26 Given the distance and the topography of the site, and the lack of on-site refuse collection, the proposed refuse and recycling provision for the development would result in a poor quality of development and a detriment to future occupiers, who would be likely to leave bins at the collection point. The proposal therefore would result in an unacceptable adverse impact on the living conditions for future occupiers, and potential increased disruption to neighbouring occupiers, contrary to policy DSP3 and criteria (v) of DSP40.

**(iv) Impact on Ecology/Protected Species:**

- 5.27 The appeal site is located within an area of maintained grassland (lawn) as part of the extensive garden area serving 21 Burrige Road. The site is bounded to the south by woodland and to the west a line of trees and hedging which separates the site from the extensive rear garden of 31 Burrige Road. At the time of the application, the Council's Ecologist raised no in principle concerns with the application, although highlighted that insufficient information had been provided to demonstrate the level of impact on existing habitats to the periphery of the site.
- 5.28 The appellant submitted a Preliminary Ecological Appraisal and Dormouse Survey dated October 2018, and an Ecology Addendum dated August 2019. The reports were considered by the Council's Ecologist at the time of the application but given the date of the original report (2018) requested an updated survey be undertaken to ensure no significant changes to the site. The appellant submitted the appeal prior to the receipt of this updated information. However, the Appellant has since provided an updated Preliminary Ecological Appraisal (December 2020) which has been considered by the Council's Ecologist.
- 5.29 The Council's Ecologist has reviewed the updated Preliminary Ecological Appraisal and has raised no objection to the appeal proposal, subject to conditions (attached at the suggested conditions in Appendix A). Subsequently

the Council wishes to withdraw their objection to the scheme regarding reason for refusal (iv) – impact on protected species.

**(v) Impact on Protected Sites - nitrates**

- 5.30 The Solent is internationally important for its wildlife. Each winter it hosts over 90,000 waders and wildfowl including 10 percent of the global population of Brent Geese. These birds come from as far as Siberia to feed and roost before returning to their summer habitats to breed. There are also plants, habitats and other animals within The Solent which are of both national and international importance.
- 5.31 In light of their importance, areas within The Solent have been specifically designated under UK law. Amongst the most significant designations are Special Protection Areas (SPA) and Special Areas of Conservation (SAC). The following list of designated sites are located in proximity of Fareham Borough, and are known collectively as the Protected Sites around The Solent (Protected Sites):
- Solent and Southampton Water SPA and Ramsar site;
  - Portsmouth Harbour SPA and Ramsar site;
  - Chichester and Langstone Harbours SPA and Ramsar site;
  - Solent and Dorset Coast SPA;
  - Solent Maritime SAC; and,
  - Solent and Isle of Wight Lagoons SAC.
- 5.32 Natural England has highlighted that there is existing evidence of high levels of nitrogen and phosphorus in parts of The Solent with evidence of eutrophication. Natural England has further highlighted that increased levels of nitrates entering The Solent, as a result of increased amounts of wastewater from new dwellings, and increased air pollution from increased traffic generation will have a likely significant effect upon the Protected Sites. A further impact of increased recreational disturbance is considered below in part (vi) of the Statement of Case.
- 5.33 The Council has addressed, in the short term, the air quality impact up to 2023 through the provision of the Air Quality Habitats Regulation Assessment (prepared by Ricardo in 2019). The report is available to view on the Council's website: [www.fareham.gov.uk/planning/nitratepositionstatement.aspx](http://www.fareham.gov.uk/planning/nitratepositionstatement.aspx). However, the impact on water quality requires mitigation. Achieving nutrient neutrality is one way to address the existing uncertainty surrounding the impact of new development on the designated Protected Sites. Natural England has provided a methodology for calculating nutrient budgets and options for mitigation should this be necessary. The Natural England Methodology is

attached at Appendix I to this Statement of Case. The nutrient neutrality calculation includes key inputs and assumptions that are based on the best scientific evidence and research, however, for each input there is a degree of uncertainty. Natural England advises the decision maker to take a precautionary approach when addressing uncertainty and calculating nutrient budgets.

- 5.34 Regulation 63 of the Habitats and Species Regulations 2017 provides that planning permission can only be granted by a 'Competent Authority' if it can be shown that the proposed development will either not have a likely significant effect on the designated Protected Sites, or if it will have a likely significant effect, that effect can be mitigated so that it will not result in an adverse effect on the integrity of the designated Protected Sites. This is done following a process known as a Habitat Regulations Assessment and Appropriate Assessment. The competent authority is responsible for carrying out this process, although they must consult with Natural England and have regard to their representations. The competent authority in respect of this proposal is the Planning Inspectorate.
- 5.35 In order to aid developers to achieve nutrient neutrality the Council has entered into a s106 legal agreement with the Hampshire and Isle of Wight Wildlife Trust (HIWWT) and the Isle of Wight Council (dated 30 September 2020) to enable developers to enter into a contract to purchase 'nitrate credits' for a re-wilding project by the HIWWT on a farm, known as Little Duxmore Farm. The agreement would see a corresponding parcel of agricultural land at Little Duxmore Farm on the Isle of Wight being removed from intensive agricultural use, and therefore provide a corresponding reduction in nitrogen entering The Solent marine environment. As part of that agreement, conditional on the grant of planning permission, conditions requiring the securing of a water consumption limit of the Building Regulations Optional requirement of 110 litres per person per day would be required.
- 5.36 At the time of the consideration of the application by the Planning Committee in January, the appellant had provided no evidence that they were able to mitigate the likely significant effects of the development on the designated Protected Sites from increased nitrogen loading. However, since that time, the Council has been notified that the appellant has a contract with the HIWWT, and purchased the necessary credits to off-set their development proposal.
- 5.37 It is however the responsibility of the Planning Inspectorate as the competent authority to undertake the Appropriate Assessment, in consultation with Natural England to determine if the mitigation is sufficient to address the likely significant effect of the development on the designated Protected Sites around the Solent. If insufficient credits have been purchased, or Natural England raise an objection this approach, the Council would maintain that the development would result in

a likely significant effect, in terms of nitrogen impact and the appeal proposal would be contrary to policies CS4, DSP13 and criteria (v) of DSP40.

**(vi) Impact on Protected Sites – recreational disturbance**

- 5.38 As highlighted above, the coastline around The Solent provided feeding grounds for internationally protected populations of overwintering birds and is used extensively for recreation. Natural England has concluded that the likelihood of a significant effect in combination arising from new housing around The Solent cannot be ruled out. Applications for residential development within the Borough therefore need to propose measures to mitigate the direct impacts of their development in the Solent SPA. This can be done by the provision of a financial contribution, which contributes towards education and the provision of Solent Rangers to help protect and highlight awareness of the impact of recreational disturbance of the Solent's various Special Protection Areas. This approach forms part of the Solent Recreation Mitigation Strategy (December 2017) adopted by the Council. The Strategy is attached at Appendix G to this Statement of Case.
- 5.39 The Appellant has not provided the necessary contribution to address this, or provided a draft Section 106 Unilateral Undertaking highlighting their intention to make this contribution in the event that the appeal is allowed. It is noted in the Appellant's Statement of Case their willingness to pay this contribution, but in order to ensure this is undertaken and in order for the competent authority to confirm that the necessary mitigation is in place, it would need to be either paid upfront or secured via a legal agreement. Until such time, it remains the opinion of the Council that the proposal would result in increased recreational disturbance to the Special Protection Areas, and therefore fail to comply with policy DSP15 of the adopted Part 2 Local Plan.

## **6.0 Conclusion**

- 6.1 The Council acknowledge its current lack of a five-year supply of housing provision, and in such circumstances, Policy DSP40 becomes a material consideration in the determination of planning applications for residential developments in the countryside that do not fall under the remit of paragraph 79 of the revised NPPF.
- 6.2 The Council has carefully assessed the proposals against the five criteria in Policy DSP40: Housing Allocations and it is considered that the appeal proposal is contrary to several of Policy's criteria.
- 6.3 In addition and given the location of the appeal site outside of the defined urban settlement boundary and given that the proposal does not relate to agriculture, forestry, horticulture and required infrastructure, the principle of development of the site would be contrary to policies CS2, CS6 and CS14 of the Core Strategy and policy DSP6 of the Local Plan Part 2. The introduction of four dwellings on this site is further judged by the Council to harm the character of this countryside location, contrary to the prevailing character of road frontage ribbon development, contrary to policies CS14 and CS17.
- 6.4 The Council acknowledge that the proposals will make provision of an additional four residential self-build units to address the Council's shortfall.
- 6.5 However, given the limited contribution the proposal would make to addressing the Council's shortfall in housing together with the site's location poorly integrated with the existing urban area, and the harm which would arise to the character of the area; the Council consider that these factors significantly and demonstrably outweigh the benefits of granting planning permission.
- 6.6 Further, despite the overall improvements to the scheme from the earlier dismissed appeal, with fewer houses and housing designs of a more subservient appearance, the principle of the development in this location would be harmful to the to the prevailing character of the area, through the provision of a modern estate type development in a backland location, in a semi-rural setting dominated by road frontage, ribbon development, largely characterised with long rear gardens extending to the wider countryside beyond.
- 6.7 Finally, the Council acknowledges that the Appellant has agreed the nitrate mitigation to address the impact, which if considered acceptable by the Planning Inspectorate would address that part of the reason for refusal, subject to the

completion of an Appropriate Assessment and consultation with Natural England. However, the Appellant has thus far made no provision to address the recreational disturbance impact, and therefore a likely significant impact on the Special Protection Areas would remain.

- 6.8 Therefore, having regard to the above, the Council respectfully requests that the Inspector dismisses the appeal.

# Appendices

## **APPENDIX A: Suggested Conditions**

A.1 Below are some suggested conditions should the Inspector be minded to allow the appeal and grant Planning Permission. It is noted that the Appellant has purchased the nitrate mitigation credits from the HIWWT scheme, and therefore no condition regarding securing these would be necessary.

1. The development hereby permitted shall be begun before the expiration of three years following the date of this decision.

REASON: To allow a reasonable time period for work to start, to comply with Section 91 of the Town and Country Planning Act 1990, and to enable the Council to review the position if a fresh application is made after that time.

2. The development hereby permitted shall be retained only in accordance with the following approved plans:

- i) Location Plan and Site Plan (Drawing: 17.096.36.01 Rev L);
- ii) Plot 1 – Plans and Elevations (Drawing: 17.096.36.03);
- iii) Plot 2 – Plans and Elevations (Drawing: 17.096.36.04);
- iv) Plot 3 – Plans and Elevations (Drawing: 17.096.36.05);
- v) Plot 4 – Plans and Elevations (Drawing: 17.096.36.06);
- vi) Car barn – Floor Plan and Elevations (Drawing: 19.043.02\_17.096.36.07);
- vii) Street Scenes (Drawing: 19.043.02\_17.096.36.10 Rev A);
- viii) Proposed 3D View (Drawing: 17.096.36.20 Rev A); and,
- ix) Phasing Plan (Drawing: 17.096.36.30 Rev A).

REASON: To avoid any doubt over what is permitted

3. No development hereby permitted shall proceed beyond damp proof course level until details (including samples where requested by the Local Planning Authority) of all proposed external facing (and hardsurfacing) materials have been submitted to and approved by the Local Planning Authority in writing. The development shall be carried out in accordance with the approved details.

REASON: To secure the satisfactory appearance of the development.

4. No dwelling, hereby approved, shall be first occupied until the approved parking and turning areas (where appropriate) for that property have been constructed in accordance with the approved details and made available for use. These areas shall thereafter be kept available for the parking and turning of vehicles at all times unless otherwise agreed in writing by the Local Planning Authority following the submission of a planning application for that purpose.

REASON: In the interests of highway safety.

5. No development shall take place until details of the type of construction proposed for the roads and access(es) and the method of disposing of surface water have been submitted to and approved by the Local Planning Authority in writing.

REASON: To ensure that the roads are constructed to a satisfactory standard.

6. No development erected on the site subject to this planning permission shall be first occupied until there is a direct connection from it, less the final carriageway surfacing, to the existing highway. The final carriageway surfacing shall be commenced within three months and completed within six months from the date upon which erection is commenced of the penultimate building/dwelling for which permission is hereby granted. The roads shall be laid out and made up in accordance with the approved specification, programme and details.

REASON: To ensure that the roads and footways are constructed in a satisfactory manner.

7. No dwelling shall be occupied until the bin and cycle stores have been made available in accordance with the approved plans. These designated areas shall thereafter be kept available and retained at all times for the purpose of bin and cycle storage.

REASON: In the interests of visual amenity and in order to facilitate modes of transport alternative to the private car.

8. No development shall commence on site until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority (LPA). The Construction Management Plan shall address the following matters:

- a) How provision is to be made on site for the parking and turning of operatives'/contractors'/sub-contractors' vehicles and/or construction vehicles;

- b) the measures the developer will be implementing to ensure that operatives'/contractors'/sub-contractors' vehicles and/or construction vehicles are parked within the planning application site;

- c) the measures for cleaning the wheels and underside of all vehicles leaving the site;

- d) a scheme for the suppression of any dust arising during construction or clearance works;

e) the measures for cleaning Burridge Road to ensure that they are kept clear of any mud or other debris falling from construction vehicles, and

f) the areas to be used for the storage of building materials, plant, excavated materials and huts associated with the implementation of the approved development.

The development shall be carried out in accordance with the approved CMP and areas identified in the approved CMP for specified purposes shall thereafter be kept available for those uses at all times during the construction period, unless otherwise agreed in writing with the LPA. No construction vehicles shall leave the site unless the measures for cleaning the wheels and underside of construction vehicles are in place and operational, and the wheels and undersides of vehicles have been cleaned.

REASON: In the interests of highway safety and to ensure that the occupiers of nearby residential properties are not subjected to unacceptable noise and disturbance during the construction period. The details secured by this condition are considered essential to be agreed prior to the commencement of development on the site so that appropriate measures are in place to avoid the potential impacts described above.

9. The development hereby permitted shall be carried out in accordance with the measures detailed in Sections 5.3, 5.4 and 5.6 of the submitted Updated Preliminary Ecological Appraisal (report by Ecosupport dated December 2020).

REASON: To provide ecological protection of protected species.

10. Prior to commencement of the development hereby permitted, a detailed scheme of biodiversity enhancement to be incorporated into the development shall be submitted to and approved in writing to the Local Planning Authority. Development shall subsequently proceed in accordance with any such approved details.

Reason: To mitigate the impact of the development on biodiversity of the site. The details secured by this condition are considered essential to be agreed prior to the commencement of development on the site so that appropriate measures are in place to avoid damage to the existing biodiversity on the site.

11. No work on site relating to the construction of any of the development hereby permitted (Including works of demolition or preparation prior to operations) shall take place before the hours of 0800 or after 1800 Monday to Friday, before the hours of 0800 or after 1300 Saturdays or at all on Sundays or

recognised bank and public holidays, unless otherwise first agreed in writing with the Local Planning Authority.

REASON: To protect the occupiers of nearby residential properties against noise and disturbance during the construction period.

12. None of the residential units hereby permitted shall be occupied until details of water efficiency measures to be installed in each dwelling have been submitted to and approved in writing by the Local Planning Authority. These water efficiency measures should be designed to ensure potable water consumption does not exceed an average of 110 litres per person per day. The development shall be carried out in accordance with the approved details.

REASON: In the interests of preserving water quality and resources

- Appendix B: January 2021 Committee Report (and Update Sheet)**  
(Attached separately)
- Appendix C: Appeal Decision APP/L1720/W/19/3235706**  
**21 Burr ridge Road, Burr ridge (Appeal Site)**  
(Attached separately)
- Appendix D: Appeal Decision APP/A1720/W/18/3197659**  
**17 Burr ridge Road, Burr ridge**  
(Attached separately)
- Appendix E: Appeal Decision APP/L1720/W/19/3226088**  
**35 Burr ridge Road, Burr ridge**  
(Attached separately)
- Appendix F: Appeal Decision APP/L1720/W/18/3209865**  
**77 Burr ridge Road, Burr ridge**  
(Attached separately)
- Appendix G: Solent Recreation Mitigation Strategy**  
**December 2017**  
(Attached Separately)
- Appendix H: Housing Land Supply Position Paper**  
**February 2021**  
(Attached Separately)
- Appendix I: Advice on Achieving Nutrient Neutrality for New**  
**Development in the Solent Region**  
**Natural England (June 2020)**  
(Attached Separately)

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

## PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:

Mr

First Name:

Steve

Last Name:

Carrington

Job Title: (where relevant)

Organisation: (where relevant)

Foreman Homes Ltd

c/o Agent

Address:

Postcode:

Telephone Number:

Email Address:

A3 Please provide the Agent's details:

Title:

Mr

First Name:

Steven

Last Name:

Brown

Job Title: (where relevant)

Organisation: (where relevant)

Woolf Bond Planning

Address:

Postcode:

Telephone Number:

Email Address:

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1, HA1 and HP4**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
8. Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015)
9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in a parcel of the Strategic Allocation known as land North and South of Greenaway Lane, Warsash. Foreman Homes have specific interest in Land to the east of Brook Lane (SHELAA 3164). It is proposed as a housing allocation for 180 dwellings under Policy HA1 of the 2017 consultation draft Local Plan and has resolution to grant.
- 1.2. As such, the Site has been promoted through earlier stages of the Local Plan process as sustainable urban extension to Fareham, an acknowledged suitable location for growth within the Borough as indicated in the SHELAA.
- 1.3. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore advocate changes to the Local Plan to address this, whilst supporting the allocation for the land to the east of Brook Lane.
- 1.4. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
- 1.5. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## **2. REPRESENTATIONS AND SUPPORTING INFORMATION**

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)

2.2. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection
Policy HA1 – North and South of Greenaway Lane	Support

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
  
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
  
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
  
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
  
- 3.4. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities. It is imperative that the allocation of land north and south of Greenaway Lane is promoted to ensure there is a large contribution towards housing supply thus helping to resolving this issue.

- 3.5. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
  
- 3.6. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, FBC has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement asset out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.

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<sup>7</sup> (541 x 18) + 1,000

5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

- 5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.
- 5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

## **Conclusions**

- 5.33. The housing requirement and delivery as set out in Policy H1 cannot be said to be sound as it fails to provide for at least 15 years post adoption together with a failure to plan for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### **Changes sought to the Development Requirements in Policy H1.**

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and like Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;

- c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
- d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.

5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.

1. That policy H1 is amended to:
  - A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
2. That consequential amendments are made to the document to reflect these revisions.

## **6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY**

### **General**

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

- 6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.
- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Portchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.

- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
  - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
  - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
  - d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
  - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
  - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

- 6.10. The Inspector’s conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.
- 6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client’s omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 10**):
- 6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.
- 6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 10** is that the shortfall is much greater than purported to be the case by the Council.
- 6.14. The below Table provides a comparison between the housing land supply position set out in the Council’s Published Report to Committee in February 2021, the Council’s updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 10**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

- 6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.
- 6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

### **Suggested Changes to Policy HP4**

- 6.17. Policy HP4 cannot be said to be sound in respect of the following:
- a) Not positively prepared as the policy (alongside others in the document) will fail to provide an effective solution towards maintaining a five year supply of housing,
  - b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.
- 6.18. To address these matters of soundness, the following amendments are proposed:
- 1. That clause c is omitted from policy HP4.

## **7. POLICY HA1: LAND NORTH AND SOUTH OF GREENAWAY LANE**

### **General**

- 7.1. Foreman Homes have an interested in a parcel of land, Land East of Brook Lane, which is part of the larger allocation known as land North and South of Greenaway Lane which has a yield of 824 dwellings. The parcel of land, known hence forth as 'the site' has resolution to grant outline planning for 180 dwellings.
- 7.2. The Site is well related to the urban area. It is not in a strategic gap and nor is it identified as a valued landscape. Moreover, the Site affords a sustainable location in helping to meet identified housing needs.
- 7.3. The Site has resolution to grant for outline planning permission with all matters reserved (except for access) for residential development of up to 180 dwellings, associated landscaping amenity areas and access from Brook Lane (LPA Ref: P/17/0845/OA). The application was taken to committee on 10<sup>th</sup> October 2018 but permission is still outstanding due to the impact of the development on the Solent Region with regards to nutrient neutrality.
- 7.4. Foreman Homes are entering into an agreement to buy credits from Heaton Farms Ltd at Land at Coleman's Lane, IOW to offset the nitrate load from the proposed development therefore overcoming the issue.
- 7.5. The issue of permission is imminent and is reliant on the undertaking of an Appropriate Assessment and signing a Section 106 to secure contributions.
- 7.6. The development has numerous benefits including the provision of much needed housing in a sustainable location, delivery of affordable housing and a form of development, including by means of the proposed landscaping strategy that can be assimilated into the character of the surrounding area without having an adverse impact upon the wider landscape setting of the site.

- 7.7. The resolution to grant demonstrates that the development of this site is acceptable and therefore the continued promotion of the site as part of the larger Warsash allocation is welcome.

### **Change sought to the Local Plan**

- 7.8. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **land north and south of Greenaway Lane should continue to be promoted for residential development.**

## **8. OVERALL CONCLUSIONS**

- 8.1. Our representations have identified a number of concerns with the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
- 8.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.
- 8.3. These matters can be addressed through Main Modifications.

## **9. FINAL REMARKS**

- 9.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 9.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations.
- 9.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.



The Planning Inspectorate

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# **Report to Tonbridge and Malling Borough Council**

**by Louise Crosby and Luke Fleming**

**Inspectors appointed by the Secretary of State**

**Date: 07 June 2021**

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Planning and Compulsory Purchase Act 2004  
(as amended)  
Section 20

## **Report on the Examination of the Tonbridge and Malling Borough Council Local Plan**

The Plan was submitted for examination on 23rd January 2019

The examination hearings were held between 6th and 8th October 2020

File Ref: PINS/H2265/429/8

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## **Abbreviations used in this report**

DtC	Duty to Co-operate
HMA	Housing Market Area
LPA	Local Planning Authority
MoUs	Memorandums of Understanding
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
SDC	Sevenoaks District Council
the Act	Planning and Compulsory Purchase Act 2004 (as amended)
the Plan	Tonbridge and Malling Borough Local Plan

## **Non-Technical Summary**

This report concludes that the Tonbridge and Malling Borough Local Plan (the Plan) is not legally compliant in respect of the Duty to Cooperate (DtC) and, as such, we recommend that the Plan is not adopted.

## Introduction

1. This report contains our assessment of the Tonbridge and Malling Borough Local Plan in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended) (the Act). It considers whether the Plan's preparation has complied with the duty to co-operate (DtC).
2. The revised National Planning Policy Framework (NPPF) was published in July 2018 and further revised in February 2019. It includes a transitional arrangement in paragraph 214 which indicates that, for the purpose of examining this Plan, the policies in the 2012 NPPF will apply. Similarly, where the Planning Practice Guidance (PPG) has been updated to reflect the revised NPPF, the previous versions of the PPG apply for the purposes of this examination under the transitional arrangement. Therefore, unless stated otherwise, references in this report are to the 2012 NPPF and the versions of the PPG which were extant prior to the publication of the 2018 NPPF.
3. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound Plan. The Tonbridge and Malling Borough Local Plan, submitted on 23 January 2019, is the basis for our examination. It is the same document as was published for consultation between 1 October 2018 and 19 November 2018.
4. This report considers whether the Plan's preparation has complied with the DtC. Given our conclusion in relation to the DtC, we do not go on to consider whether the Plan is sound and whether it is compliant with other legal requirements. If a local planning authority cannot demonstrate that it has complied with the DtC at the independent examination of their local plan, then Section 20(7A) of the Act requires that the examiner must recommend non-adoption of the Plan. This is the situation in this case, and it is not, therefore, relevant for us to consider the other matters in this Report. Accordingly, we have not recommended any main modifications.
5. Hearing sessions were held between 6 and 8 October 2020 and they focussed on legal compliance matters including the DtC and Sustainability Appraisal.
6. Further hearing sessions were planned as part of the examination from 3-5 November and on 10 November 2020 to consider other soundness issues. However, following our consideration of the evidence presented by Tonbridge and Malling Borough Council (the Council) and other participants in response to our Matters, Issues and Questions<sup>1</sup> at the hearing session in relation to DtC, and taking into account written representations and discussion at that hearing session we notified the Council in a letter<sup>2</sup> dated 22 October 2020, that we had

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<sup>1</sup> ED56

<sup>2</sup> ED67

significant concerns in respect of legal compliance. The letter also explained that we had asked the Programme Officer to cancel the hearings planned for November 2020 and that we would be writing to the Council as soon as possible setting out our specific thoughts in more detail. The letter also advised that we would not reach a final conclusion on the way forward for the examination until we had had a chance to consider the Council's response to that letter.

7. Our letter<sup>3</sup> to the Council, dated 15 December 2020, set out our concerns with regards to the DtC in some detail. The Council submitted a response dated 29 January 2021<sup>4</sup>, along with a number of appendices. Having fully considered the Council's response and appendices, our final letter<sup>5</sup>, to the Council, dated 2 March 2021, set out our conclusions on this matter and stated that, there were two options before the Council; either to withdraw the Plan from examination or we would write a final report recommending its non-adoption because of a failure to meet the DtC. We gave the Council 21 days to consider which option they wished to pursue. On 11 March 2021 the Council confirmed that it would not be withdrawing the Plan and invited us to prepare a final report at our earliest convenience<sup>6</sup>.

## **Assessment of Duty to Co-operate**

### **Background**

8. Section 20(5)(c) of the Act requires that we determine whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
9. Section 33A of the Act imposes a duty on a local planning authority to co-operate with other local planning authorities, the County Council and prescribed bodies or other persons by engaging constructively, actively and on an ongoing basis in relation to the preparation of a development plan document so far as relating to a strategic matter to maximise the effectiveness of the activity of plan preparation. It makes clear that sustainable development or use of land that would have a significant impact on at least two planning areas is such a strategic matter. Account can only be taken of the engagement undertaken by authorities up to the point of submission of the Plan, as the assessment of compliance with the DtC only relates to the preparation of the Plan.
10. Government policy in the 2012 NPPF paragraphs 178 to 181 sets out the importance placed on planning strategically across boundaries. Paragraph 181

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<sup>3</sup> ED68

<sup>4</sup> ED69

<sup>5</sup> ED81

<sup>6</sup> ED82

states that "local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination" and that "cooperation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development".

11. It is not disputed by the Council that housing is a strategic matter for the purposes of S33A of the Act, which required cooperation as set out above. Whether the DtC has been complied with is a matter of judgement for the examining Inspectors following consideration of the evidence presented by the Council and other participants, both in writing and at the hearing sessions.
12. Sevenoaks District Council (SDC) considers that it is unable to meet all of its own housing needs. It is a neighbouring local authority and forms a large part of the West Kent Housing Market Area (HMA) which also includes a significant part of Tonbridge and Malling Borough, as well as parts of Tunbridge Wells Borough. Our report will focus on the engagement of the Council with SDC, in relation to housing across the HMA. The NPPF (para 47) states that local planning authorities (LPAs) should use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for housing in the HMA, as far as is consistent with the policies set out in this Framework.

**Did the Council know that Sevenoaks District Council considered that it would be unable to meet its own housing needs in full, prior to the submission of their plan for examination in January 2019?**

13. The Council explained at the hearings that it was not clear until SDC's Regulation 19 (of the Town and Country Planning (Local Plan) (England) Regulations 2012 (the Regulations)) Plan was published in December 2018 what the scale of unmet need was and even then it was not certain as the Plan had not been examined by an Inspector and the housing need and requirement found sound. As set out above, the Tonbridge and Malling Regulation 19 Plan was submitted for examination on 23 January 2019 which was before the transitional deadline of 24 January 2019, set out in paragraph 214 of Annex 1 to the July 2018 and February 2019 versions of the NPPF.
14. At the hearings the Council's view was that until SDC's Plan had been consulted on there was uncertainty about whether there was any unmet need and the basis for that. Furthermore, there had not been a process of examination to demonstrate that there were unmet needs and even if there were unmet needs there was a chance that they could be quite small. However, SDC's Regulation 18 Plan which it consulted on, between July and September 2018, identified a need for 13,960 dwellings and identified sites to

meet between 6,582 and 13,382 dwellings<sup>7</sup>. So, at this stage it was clear there was a likely shortfall of at least around 600 dwellings, and this was the best case scenario. At worst it was closer to approximately 7000. While the level of unmet need and the justification for it could be a matter for debate, there is enough here to demonstrate that this was a strategic matter on which cooperation was required. In the submitted SDC Regulation 19 Plan the unmet need was in the order of 3,392 dwellings<sup>8</sup>. The calculation of housing need is not an academic exercise, it is a question of identifying an actual local need.

15. However, much earlier than this, in October 2017 when SDC were at their 'issues and options' stage of plan preparation, the Council wrote to SDC (ED78B), saying, "At this stage and based on the evidence available it is highly unlikely that there would be supportable reasons or indeed the capacity for meeting any unmet need from Sevenoaks in Tonbridge and Malling".
16. This was at a stage in the process when officers in a report to Tonbridge and Malling Council's Planning and Transportation Advisory Board (ED78A), in December 2017, advised that SDC, unlike Tonbridge and Malling Council, was not planning to release Green Belt land to meet its housing need. It also says that, even with some Green Belt releases, "the conclusion is that Sevenoaks will be a significant way adrift from meeting its identified housing needs". So, in our view, it is clear that the Council knew in 2017 that SDC would be likely to reach the judgement that it would be unable to meet its own housing needs in full, even with Green Belt release.
17. The Council's views on market capacity are informed by a Housing Delivery Study (CD HO3) which was published in September 2017. The purpose of the Study was to consider the market capacity and potential pace of housing delivery within the Borough to inform the development of the emerging Local Plan. However, paragraph 1.7 says that "emerging evidence suggests that a number of neighbouring authorities may not be able to meet in full their objectively assessed housing need. Some authorities may therefore ask TMBC whether it is able to help to address an unmet housing need arising". Paragraph 4.8 advises that "...in addition to Tonbridge and Malling's own housing needs, the Council has a Duty to Cooperate with neighbouring authorities and is likely to need through the plan-making process to consider the potential to contributing to meeting unmet housing needs from beyond the borough boundary. A core role of this study is to consider what additional housing delivery the market could potentially accommodate".

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<sup>7</sup> Page 2 of letter dated 28 October 2019, from the Inspector examining the SDC Plan

<sup>8</sup> Paragraph 14 of the Report on the Examination of SDC Plan, dated 2 March 2020

18. It is clear then that one of the motivations for the September 2017 Study was to consider the issue of unmet needs arising in a number of neighbouring authorities. Irrespective of a number of technical concerns raised by representors with regard to whether this evidence demonstrates market capacity issues or not, in our view the Housing Delivery Study is further evidence that shows that the Council knew in 2017 that SDC had or was likely to have unmet need and that they may be asked for help with meeting the need.
19. Also, it is well documented that the Council, along with SDC and Tunbridge Wells were involved in a pilot scheme (West Kent Statement of Common Ground Pilot Project), which appears to have started in 2017. This pilot scheme with the Planning Advisory Service (PAS) was set up to look at the use of Statements of Common Ground in plan making. Paragraph 6.6 of the PAS facilitator's notes, dated April 2018, says "Each of the Council's has a clear figure for its housing need, but whilst Tonbridge and Malling BC is confident that it can meet its need, Sevenoaks DC and Tunbridge Wells BC have not yet completed the work needed to determine whether or not they can meet their housing need. Thus the Councils are not yet in a position to reach agreement on the matter of housing supply". However, paragraph 6.3 of the same notes says, "This may increase the housing land supply but it remains unlikely that Sevenoaks DC will be able to meet its housing need in full". This shows that it was known then that there was likely to be some unmet need in SDC, albeit there was no firm figure.
20. In summary, it appears from the evidence before us that the Council knew for a number of years, prior to the submission of their Plan for examination, that it was highly likely that SDC would reach the judgement that it would be unable to meet its housing need in full. While the scale of the unmet need was uncertain, the overall position was clear well in advance of the submission of the Plan for examination in January 2019. It should, therefore, have been obvious to the Council that this was a strategic matter to which the DtC applied.
21. This should have led to the Council engaging constructively, actively and on an ongoing basis with SDC on unmet housing needs, regardless of whether this was a precise figure or a range, or indeed whether the Council felt it may not be able to accommodate the unmet need in full or in part. The requirement of the Act is for authorities to actively engage to maximise the effectiveness of plan preparation.

**Did the Council engage constructively, actively and on an ongoing basis with SDC on unmet housing needs?**

22. In the Council's Duty to Cooperate Statement (CD SC1), section 8 deals with Cross-Boundary Issues. The table in paragraph 8.1 of this document sets out the strategic cross boundary issues, the key neighbouring authorities/organisations in relation to each issue and the summary of cooperation. Under the housing section of this table the key neighbouring authorities/organisations are listed as Maidstone Borough Council, Ashford Borough Council, Kent County Council and Highways England. It seems that the limited extent of this table is because it only covers authorities where cross boundary issues are specifically covered in the Plan. Nowhere in this document, which is dated January 2019, and therefore postdates the publication of the SDC Regulation 19 Plan on 18 December 2018, is there any mention of unmet housing need in SDC. If there had been any constructive, active and ongoing engagement with SDC ahead of submission on what was clearly a strategic matter, it would be reasonable to expect that this would at least be mentioned in the Council's DtC statement.
23. As set out above, it was apparent from as early as October 2017 there were clear signs that SDC was likely to conclude that it would not be able to meet its housing needs in full. It seems that regular meetings were held between the Council and SDC during the preparation of the Council's Plan, but there is no evidence that unmet housing need in SDC was discussed at these meetings and no meeting minutes have been provided to evidence that housing needs were discussed. The Council say that the discussion was predominantly about 'constraints' to meeting housing needs but no minutes of any of these meetings have been produced as evidence of what was actually discussed. Consequently, there is no evidence before us, that these meetings were used for constructive and active engagement in an attempt to resolve the strategic matter of unmet housing need and maximise the effectiveness of plan preparation.
24. The Council argue that SDC did not formally ask them for help and it was not up to the Council to "make the running", but this is a circular argument with a risk that both parties defer the issue to the other without any meaningful attempt to resolve it. We are obliged to consider whether the Council cooperated and the question of whether or not SDC made any running does not remove the obligation on the Council, particularly as the issue of unmet housing need in Sevenoaks appeared to be well known to both. Moreover, it is clear from the Council's letter sent to SDC in October 2017, where they say "At this stage and based on the evidence available it is highly unlikely that there would be supportable reasons or indeed the capacity for meeting any unmet need from Sevenoaks in Tonbridge and Malling", that such a request would have been likely to be pointless. The letter was therefore a

discouragement to constructive, active and ongoing engagement, because it can reasonably be read as closing the door to cooperation. Indeed, there does not appear to have been much engagement for the next 15 months or so, up to the submission of the Plan for examination. In fact, very little evidence of any meaningful engagement in relation to this particular strategic matter has been submitted for us to take into account.

25. The Council explained at the hearings that, if they had delayed the submission of the Plan to try to accommodate some of the unmet need from SDC, once the SDC Regulation 19 Plan was published in December 2018, they would have had to effectively start plan preparation again. This is because they would have missed the transitional deadline in NPPF paragraph 214 and their housing need would have increased by around 3000 dwellings, due to the introduction of the standard method in the 2018 and 2019 versions of the NPPF<sup>9</sup> and related PPG. Whilst this may have been so, it is not an adequate or legally compliant reason to not engage. Early engagement in 2017, when there was first evidence that SDC were unlikely to be able to meet their housing need, would not necessarily have caused delays to the overall process and to the Council meeting the transitional deadline<sup>10</sup>. Furthermore, the decision to push ahead to submit on or before the 24 January 2019 was entirely a choice made by the Council. Importantly, even if no agreement had been reached on the matter, if constructive, active and ongoing engagement had taken place from the earliest stages of preparation of the Plan, the Plan would have been found legally compliant in relation to the DtC.
26. The conclusion of the SDC Regulation 18 consultation, in September 2018, was some four months prior to the submission of the Plan for examination. At this point the unmet need was still a range and would only be confirmed on conclusion of the Sevenoaks examination. This is something the Council argue is necessary before active and constructive engagement can commence, but we strongly disagree. It should have been clear at this time (i.e. four months prior to submission of the Plan), if not earlier, that there was a strategic matter relating to unmet housing need which required addressing through constructive engagement, regardless of the lack of clarity at the time over the precise volume of unmet need.
27. Whilst it was not clear in 2017, or even later in the process, at the Regulation 18 consultation stage, what the exact level of unmet need was or would be, the fact that SDC considered there was likely to be some unmet need should have led to constructive, active and ongoing engagement between the Council and SDC at that point and subsequently.

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<sup>9</sup> NPPF 2019 Paragraph 60

<sup>10</sup> NPPF 2019 Annex 1, paragraph 214

28. The Council advise that, like SDC, they have large amounts of Green Belt land, which is a constraint to meeting housing needs other than their own. Both authorities have significant areas of Green Belt as well as land in Areas of Outstanding Natural Beauty (AONB). The Council carried out a Green Belt review of land in their own administrative boundary, leading to the release of some Green Belt land in the Plan as well as a proposal to put some land into the Green Belt.
29. However, there is no evidence that at any time the Council cooperated or even considered cooperating with SDC on a joint review of the Green Belt across both of their boundaries to understand the comparative quality across the two authority areas and any potential to amend Green Belt boundaries to fully or more fully meet needs. Nor was there any joint work to assess and reach an agreement on the housing capacity on non Green Belt areas across both authorities or on how that capacity might reasonably be maximised. The Council say the reason for this is that the two LPAs were at different stages of plan making, however the plans were submitted for examination within months of each other. In addition, the fact that the Council disagreed with SDC on the approach they were taking to Green Belt release did not mean the DtC did not apply and could be ignored.
30. In terms of the Council's position about relative timescales, the Council's Regulation 19 Plan was published for consultation on 1 October 2018, around 3 weeks after the conclusion of the SDC Regulation 18 consultation. SDC published their Regulation 19 Plan for consultation on 18 December 2018 and so the fact is the plan-making timescales and processes in Tonbridge and Malling and SDC were actually closely aligned. We can find no credible reason why the Councils could not have engaged constructively and actively during the plan making process in accordance with the duty on them to engage constructively with each other in a meaningful attempt to resolve issues relating to unmet needs.
31. Whilst resolution to the problem of unmet housing needs is not a prerequisite to the Council being able to demonstrate compliance with the DtC, earlier, constructive, active and ongoing engagement, in line with the Act and national policy as articulated in the Framework and PPG, would have been much more likely to result in an effective strategy for meeting SDC's need, whether within the SDC area or elsewhere. Even if in this case the Council considered it unrealistic to contemplate a joint local plan at this point, it might have considered other less formal mechanisms of compliance with the duty, such as aligning plan time-tables and policies and/or joint approaches to plan-making. Any steps of that kind would have demonstrated positive proactive attempts at cooperation.

32. The Council's hearing statement<sup>11</sup>, submitted to SDC's examination, explains the Council's view that it would be unreasonable to expect it to accommodate any unmet housing need for SDC because it faces similar constraints and challenges, is planning to meet its own need in full, and market and infrastructure capacity mean any such external need could not be accommodated. In the circumstances, these could have all been valid issues for discussion and engagement between both authorities, but there is no evidence to indicate that they were actually the subject of any constructive engagement between the authorities.
33. The Council advise that once the actual SDC unmet need is examined and established, they would potentially seek to deal with it through a future review of the Plan. However, such an approach is not in the spirit of the Act or of national policy. The identified need for housing exists now, and the likely existence of unmet need has been known about for some time and is therefore a strategic matter that should have been considered through the DtC in the current round of local plans, not delayed to some future date. Deferring the issue to subsequent plans does not amount to constructive, active engagement, especially when the plan making processes were, in reality, closely aligned.
34. Memorandums of Understanding (MoU) were signed after the submission of both plans and provide no evidence of constructive and active engagement prior to the submission of the Plan and are therefore of no help in demonstrating the DtC has been met. Indeed, the short final MoU simply states, *'TMBC's evidence of meeting the Duty is set out in the Duty to Cooperate Statement (January 2019). The strategic cross-boundary matters and how the Duty was addressed are summarised in section 8 of the DtC Statement. The details are set out in sections 9 to 16. The record of engagement is documented in Appendix A'*. As set out above, the Statement provides no reference to the unmet housing need in SDC. Appendix A is a list of meetings that took place between April 2012 and January 2019 with various organisations, but no minutes have been provided from any of these meetings to show that unmet housing need in SDC was discussed, and moreover from careful consideration of the verbal evidence given by the Council at the hearing sessions, it would seem that it was not discussed at any of the meetings. The only discussion was about the constraints all of the Council's in the HMA were facing in meeting their housing need. Simply discussing constraints does not in itself amount to cooperation.
35. This shortcoming is surprising given that the Council were involved in the pilot scheme (West Kent Statement of Common Ground Pilot Project) with PAS looking at the use of Statements of Common Ground in plan making. Indeed,

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<sup>11</sup> Paragraph 13.19 of Tonbridge & Malling Borough Council Position Statement (ED58)

as part of this project, the Council, SDC, and Tunbridge Wells Borough Council all agreed in April 2018 that the need to address the matter of unmet housing need was the most significant issue to be addressed in any Statement of Common Ground<sup>12</sup>. This also shows that by April 2018 the Council and SDC had acknowledged that it remained unlikely SDC would be able to meet its housing need in full<sup>13</sup> and despite this, there is no evidence of cross boundary working with SDC and others as a way of seeking to ensure that housing needs were met in full across the HMA. Moreover, the NPPF at paragraph 181 provides advice to LPAs on how to demonstrate evidence of effective cooperation in relation to cross-boundary impacts. This suggests the use of, among other things, memorandums of understanding. It adds that 'cooperation should be a continuous process of engagement from initial thinking through to implementation...'. There is no evidence that this approach was followed.

36. Despite knowing that, as early as 2017, SDC was indicating it would be likely to have unmet housing need, it is reasonable for us to conclude on the basis of everything that we have considered that the Council failed to engage constructively, actively and on an ongoing basis with SDC on that strategic matter. An active process of ongoing, active and constructive engagement might or might not have led to a more positive outcome despite the constraints of market capacity, infrastructure capacity, Green Belt and AONB designations. However, what is certain is that, if parties choose not to engage with each other, there will be little prospect of difficult but important cross-border issues being resolved in relevant strategic matters. If there is no cooperation on such matters, then the effectiveness of plan preparation is unlikely to be maximised.

**If a plan is found to have failed the DtC, is it possible to proceed with the Examination?**

37. In a letter to the Planning Inspectorate, dated 18 June 2019, the Secretary of State stressed to Inspectors the importance of being pragmatic in getting a plan in place that, in line with paragraph 35 of the 2019 NPPF, represents a sound plan for the authority.
38. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This 2015 letter also stresses the importance of Inspectors working in a pragmatic way with councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within 5 years of adoption, giving councils the option to undertake

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<sup>12</sup> Sevenoaks District Council v Secretary of State for Housing Communities and Local Government [2020] EWHC 3054 (Admin)

<sup>13</sup> ED69A, Appendix D, paragraph 6.3

further work to address shortcomings identified at examination and highlighting significant issues to councils very early on and giving councils the full opportunity to address issues. However, the failure we have identified cannot be remedied during the examination since any failure in DtC cannot be resolved after submission of the Plan because the duty relates to the period of plan preparation which has ended. Once we had considered all of the evidence pertaining to DtC presented in writing and orally at the hearing sessions we immediately notified the Council of our concerns and cancelled the future hearings. We gave the Council opportunities, prior to the hearing sessions, during the hearing sessions and afterwards, to provide additional evidence confirming its approach to complying with the DtC undertaken prior to the submission of the Plan for examination.

39. In examining the Plan we have had this advice in the forefront of our minds and we have worked in a pragmatic way with the Council towards achieving a sound plan as far as practicable. However, we have identified a failure of legal compliance in relation to the DtC.
40. It is reasonable for us to conclude that the DtC, as set out in section 33A of the Act, has not been met.

## **Overall Conclusion and Recommendation**

41. The DtC in Section 33A of the 2004 Act has not been met for the reasons set out above and we, therefore, recommend that the Plan is not adopted.

*Louise Crosby and Luke Fleming*

Inspectors



The Planning Inspectorate

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# **Report to Sevenoaks District Council**

**by Karen L Baker DipTP MA DipMP MRTPI**

**an Inspector appointed by the Secretary of State**

**Date 2 March 2020**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Sevenoaks District Local Plan**

The Plan was submitted for Examination on 30 April 2019.

The Examination Hearings were held between 24 and 26 September 2019 and between 1 and 3 October 2019.

File Ref: PINS/G2245/429/7

## **Abbreviations used in this Report**

DtC	Duty to Co-operate
HMA	Housing Market Area
HPS	Hearing Position Statement
IPe	Intelligent Plans and Examinations
the Plan	Sevenoaks District Local Plan
MHCLG	Ministry of Housing, Communities and Local Government
MM	Main Modification
NPPF	National Planning Policy Framework
OAN	Objectively Assessed Need
PAS	Planning Advisory Service
PPG	Planning Practice Guidance
SoCG	Statement of Common Ground
SHMA	Strategic Housing Market Assessment

## **Non-Technical Summary**

This Report concludes that the Sevenoaks District Local Plan (the Plan) is not legally compliant in respect of the Duty to Co-operate (DtC) and, as such, I recommend that the Plan is not adopted.

## Introduction

1. This Report contains my assessment of the Sevenoaks District Local Plan (the Plan) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). The National Planning Policy Framework (NPPF) 2019 makes it clear in paragraph 35 that local plans are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. It goes on to say that in order to be sound, a local plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the Examination is the assumption that the local planning authority has submitted what it considers to be a legally compliant and sound plan. The Sevenoaks District Local Plan Proposed Submission Version<sup>1</sup>, dated December 2018 and submitted on 30 April 2019, is the basis for my Examination. It is the same document as was published for consultation between 18 December 2018 and 3 February 2019.
3. This Report considers whether the Local Plan's preparation has complied with the Duty to Co-operate (DtC). Given my conclusions in respect of the DtC, I do not go on to consider whether the Plan is sound and whether it is compliant with the other legal requirements. If a local planning authority cannot demonstrate that it has complied with the Duty at the independent Examination of their Local Plan, then Section 20(7A) of the Act requires that the Examiner must recommend non-adoption of the local plan. This is the situation in this case, and it is not, therefore, necessary for me to consider the other matters further in this Report.
4. Hearing sessions were held between 24 and 26 September 2019 and between 1 and 3 October 2019. These focussed on legal compliance matters, including the DtC, and matters of soundness in relation to the Local Plan Strategy, Green Belt, Housing Need, Housing Requirement, Housing Distribution and Housing Supply, along with the Sustainability Appraisal.
5. Further Hearing sessions were planned as part of this Examination between 5 and 7 November 2019 and between 12 and 14 November 2019 to consider other soundness matters including: individual housing allocations; Gypsy and Traveller provision and allocations; employment need, requirement, distribution and supply; individual employment allocations; transport and infrastructure; the historic environment; open space, recreation and community facilities; the natural environment and biodiversity; climate change, flooding and water management; and, health, well-being and air quality. However, following my consideration of the evidence presented by the Council and other participants in response to my Matters, Issues and Questions<sup>2</sup> at the Hearing sessions during the first two weeks, and taking into account the written representations and discussion at those Hearing sessions, I had significant concerns in respect of legal compliance, namely the DtC, and soundness.

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<sup>1</sup> SDC001

<sup>2</sup> ED8

6. Following the first two weeks of Hearing sessions, I notified the Council in my letter<sup>3</sup>, dated 14 October 2019, that I had significant concerns about a number of aspects of the Plan, both in terms of legal compliance and soundness. This letter also stated that, given these concerns, I had asked the Programme Officer to cancel the further Hearing sessions planned for November and that I was preparing a letter setting out my thoughts in more detail which would be with the Council shortly afterwards. It also confirmed that I would not reach any final conclusions on the way forward for the Examination until I had had the opportunity to consider the Council's response to that letter.
7. Although I had concerns regarding soundness, these were issues which I would have needed to explore further, it is the failure to comply with the legal DtC which necessitated a halt to the Examination proceedings. Any failure in the DtC cannot be rectified once the Plan has been submitted for Examination because the DtC applies specifically to Plan preparation, and Plan preparation ends when the Plan is submitted for Examination.
8. My letter<sup>4</sup> to the Council, dated 28 October 2019, set out my concerns with regards to the DtC in some detail. The Council submitted responses<sup>5</sup> to this and to my earlier letter, along with a number of appendices. I replied<sup>6</sup> on 19 November 2019 to say that I would be responding after the pre-Election period, in line with the Planning Inspectorate's published position in this regard.
9. Having fully considered the Council's responses and appendices, my final letter<sup>7</sup> to the Council, dated 13 December 2019, set out my conclusions on this matter and stated that, unless the Council confirmed that it intended to withdraw the Plan from Examination, the only course of action open to me would be to prepare a Report concluding that the Plan is not legally compliant in respect of the DtC and recommending that it should not be adopted. In its letter<sup>8</sup>, dated 3 January 2020, the Council confirmed that it would not be withdrawing the Plan from Examination and asked that I issue my Report as soon as possible.

### **Main Modifications**

10. I have found a failure in respect of the DtC and, as such, I have no option but to recommend that the Plan should not be adopted. Accordingly, I have not concluded on any other matters in connection with the Plan and, as a result, I would not be able to recommend any Main Modifications [MMs].

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<sup>3</sup> ED37

<sup>4</sup> ED40

<sup>5</sup> ED38, ED38A, ED41, ED42, ED42A, ED42B and ED42C

<sup>6</sup> ED43

<sup>7</sup> ED44

<sup>8</sup> ED45

## **Assessment of Duty to Co-operate**

### ***Has the Council demonstrated that it has engaged constructively, actively and on an on-going basis in the preparation of the Local Plan?***

11. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by Section 33A in respect of the Plan's preparation.
12. Section 33A requires that a local planning authority co-operates with other local planning authorities, the County Council and prescribed bodies or other persons in relation to the preparation of the Plan. This duty requires the Council to engage constructively, actively and on an on-going basis in the preparation of the Plan, so far as it relates to a strategic matter. A strategic matter includes the sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas.
13. Government policy, set out in paragraph 26 of the NPPF, says that effective and ongoing joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. It goes on to say that, in particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere. Co-operation is, therefore, about maximising the effectiveness of plan preparation.
14. The Plan, as submitted, identifies a need for 13,960 dwellings between 2015 and 2035, but sets out a requirement for 10,568 dwellings, which would amount to an unmet need of 3,392 dwellings. The Council advanced a position<sup>9</sup> during the Examination which sought to reduce the unmet need. However, it would still have left an unmet need of 1,316 dwellings, even if I had agreed with the Council's position.
15. It is common ground between the Council and most parties to the Examination that housing is a strategic matter upon which the Council should engage constructively, actively and on an on-going basis with its neighbours. I concur with this view. The Council published a DtC Statement<sup>10</sup> in May 2019, following the submission of the Plan for Examination, which sets out the activities undertaken by the Council, including meetings with neighbouring authorities, at both Officer and Member level, and the production of a joint evidence base with neighbouring authorities in the West Kent Housing Market Area<sup>11</sup> [HMA].

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<sup>9</sup> Housing Supply Update Paper – C2 Update [ED23]

<sup>10</sup> SUP006 and SUP006a-d

<sup>11</sup> The West Kent Housing Market Area includes Sevenoaks District Council, Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council.

16. Whether the DtC has been complied with is a matter of judgement for the examining Inspector following consideration of the evidence presented by the Council and other participants, both in writing and at the Hearing sessions.
17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment<sup>12</sup> (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area<sup>13</sup> (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.
18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement<sup>14</sup> and Appendices<sup>15</sup> and in Appendix 1: Schedule A<sup>16</sup> attached to its letter<sup>17</sup>, dated 18 November 2019, with the minutes of most of these meetings<sup>18</sup> provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group<sup>19</sup> and the West Kent Statement of Common Ground (SoCG) Pilot Programme group<sup>20</sup>.
19. The minutes<sup>21</sup> of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues

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<sup>12</sup> Sevenoaks and Tunbridge Wells Strategic Housing Market Assessment, prepared by GL Hearn Limited, September 2015 [HOU001]

<sup>13</sup> The West Kent HMA includes Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council

<sup>14</sup> SUP006

<sup>15</sup> SUP006a, SUP006b, SUP006c and SUP006d

<sup>16</sup> ED42A

<sup>17</sup> ED42

<sup>18</sup> No minutes have been provided of the meetings held on 6 December 2017, 22 January 2018 and 14 March 2018, although summaries of the meetings on 22 January 2018 and 14 March 2018 are provided in the West Kent Statement of Common Ground (SoCG) Pilot Project Facilitator's Note, dated 3 April 2018 (updated by the amended version of this note dated 10 April 2018 and submitted by the Council as part of its Appendix 3: Duty to Co-operate Appendices [ED42C]).

<sup>19</sup> This group is made up of the three West Kent Housing Market Area (HMA) authorities, namely Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council.

<sup>20</sup> This group, facilitated by the Planning Advisory Service (PAS), also included the West Kent HMA authorities.

<sup>21</sup> Pages 172-174 of SUP006a

and Options (Regulation 18), do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary<sup>22</sup> of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPe), held on 22 January 2018, set out in the Facilitator's Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

20. The notes<sup>23</sup> of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks 'is testing options to assess the way forward'. The summary<sup>24</sup> of the meeting, held on 14 March 2018, set out in the Facilitator's Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated. The Facilitator's Note<sup>25</sup> does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say<sup>26</sup> that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.
21. The Council has since stated, in Appendix 1: Schedule A<sup>27</sup> to its letter<sup>28</sup>, dated 18 November 2019, that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect, as it referred to Sevenoaks District Council planning to meet its OAN in full. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note<sup>29</sup>, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are

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<sup>22</sup> Page 185 of SUP006a

<sup>23</sup> Pages 182-183 of SUP006a

<sup>24</sup> Page 185 of SUP006a

<sup>25</sup> Paragraphs 5.1 and 5.2

<sup>26</sup> Paragraph 6.1

<sup>27</sup> ED42A

<sup>28</sup> ED42

<sup>29</sup> West Kent SoCG Pilot Project Facilitator's Note, dated 10 April 2018, set out in 2a of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that 'the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue'. Paragraph 6.6 concludes that, 'each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need. Thus, the Councils are not yet in a position to reach agreement on the matter of housing supply'. As such, it is apparent that, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.
23. The minutes<sup>30</sup> of the West Kent DTC meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the DTC meetings refer to addressing the unmet need in Sevenoaks is at the DTC meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted<sup>31</sup> that 'officers discussed the potential requirement for a follow up letter<sup>32</sup> to request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.
24. Although the DTC statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.
25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have

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<sup>30</sup> Pages 191-192 of SUP006a

<sup>31</sup> Page 194 of SUP006a

<sup>32</sup> Letters were sent to neighbouring authorities requesting that they assist with Sevenoaks' unmet housing need in April 2019.

not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>33</sup> within the HMA.

26. In paragraph 13.2 of its HPS, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers 'did not receive any formal requests to address unmet housing need' from Sevenoaks District Council.
27. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.
28. In paragraph 1.04 of its HPS, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.
29. I appreciate that these neighbouring authorities say<sup>34</sup> that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does

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<sup>33</sup> Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council

<sup>34</sup> Letters dated 21 and 27 November 2019 set out in 3a and 3b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.

*Statements of Common Ground*

30. In order to demonstrate effective and ongoing joint working, paragraph 27 of the NPPF says that strategic policy-making authorities should prepare and maintain one or more Statements of Common Ground (SoCGs), documenting the cross-boundary matters being addressed and progress in co-operating to address these. These should be produced using the approach set out in national planning guidance and be made publicly available throughout the plan-making process to provide transparency.
31. The Council has submitted a number of SoCGs<sup>35</sup> as supporting documents, some of which were provided following the submission of the Plan for Examination, on 30 April 2019. These include several SoCGs with neighbouring authorities, including Tunbridge Wells Borough Council<sup>36</sup> and Tonbridge and Malling Borough Council<sup>37</sup>, which were signed on 21 and 30 May 2019 respectively. The agreed actions within these documents in respect of housing are to 'engage through the wider DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London's growth, large scale developments and opportunities for meeting any unmet need' and to 'undertake a 5 year review of the Local Plan'; and, 'to engage through the wider DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to strategic housing matters' respectively.
32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email<sup>38</sup> to MHCLG, dated 15 March 2019, the Council says that it 'is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.' However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They imply that these matters will be dealt with in any review of the Plan. However, the Duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination.
33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.
34. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents engagement in relation to a solution in the future, not the submitted Plan. At the DtC Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders'

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<sup>35</sup> SUP007a – SUP007i

<sup>36</sup> SUP007h

<sup>37</sup> ED6

<sup>38</sup> Email from James Gleave, dated 15 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan.

*The timing of engagement*

35. The Council refers to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. The Council says, in its letter<sup>39</sup> dated 18 November 2019, that it 'could have gone back to neighbours at this point', but decided not to, as it was felt that, as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated, 'it was therefore extremely unlikely that a higher unmet need would be met elsewhere'. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.
36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that 'all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other' at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that 'at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.' However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.
37. The full extent of unmet need only became apparent to the Council following the consideration of the responses to the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs. This would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage. However, there is no evidence to show that this occurred. Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have

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<sup>39</sup> ED42

been able to accommodate some of Sevenoaks' unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.
39. It is noted that neighbouring authorities have not indicated any willingness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks' housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need.

#### *Peer Review*

40. The peer review process undertaken by the Council consisted of advice<sup>40</sup> from Intelligent Plans and Examinations (Ipe) in November 2018; a PINS' Advisory Visit<sup>41</sup> in February 2019; MHCLG advice<sup>42</sup>; and, a review of the Plan and PAS Workshop<sup>43</sup> on 24 April 2019.
41. The advice from Ipe following its meeting with the Council on 1 November 2018, considered several matters, including housing need and delivery, however, it made no mention of the extent of unmet housing need in the District, or how this could be addressed. The purpose of the PAS Workshop, which was held six days before the Plan was submitted for Examination and led by Ipe, was 'to provide advice on the implications of the DtC for the soundness assessment of the Plan' and 'to meet with neighbouring authorities,

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<sup>40</sup> Revised Note in respect of the preparation of the Sevenoaks Local Plan, prepared by Laura Graham of Ipe, dated 4 December 2018, set out in 1a of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>41</sup> PINS Advisory Visit Note, prepared by Inspector Jonathan Bore, dated 6 February 2019, set out in 1b of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>42</sup> MHCLG correspondence, meeting 6 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>43</sup> Note on the Duty to Co-operate and the Local Plan, prepared by Ipe, dated 7 May 2019, set out in 1d of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

so they could outline their respective positions regarding meeting development needs in West Kent.'

42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings<sup>44</sup> in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan<sup>45</sup>, prepared by IPe, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement<sup>46</sup>. This note concludes that 'none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working'.
43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, the PAS Workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.
44. The Council says that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, several points were raised in relation to the DtC at the Advisory Visit<sup>47</sup> carried out by the Planning Inspectorate in February 2019, as set out in the note<sup>48</sup> of this meeting.
45. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet need and that it could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

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<sup>44</sup> This revised figure took account of proposed changes to the Plan period being put forward by the Council for consideration during the Examination.

<sup>45</sup> ED42B

<sup>46</sup> SUP006, SUP006a, SUP006b, SUP006c and SUP006d

<sup>47</sup> The Planning Inspectorate carries out Advisory Visits to local planning authorities ahead of submission to provide advice on procedures and to help them achieve a sound plan.

<sup>48</sup> The PINS Advisory Visit Meeting Note is set out in 1b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C].

46. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS Workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the DtC Statement was not submitted until May 2019. Nor would it have had the benefit of the time available to an Inspector for the examination of that detailed and complex evidence or the discussion at the Hearing sessions.
47. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement<sup>49</sup> in May 2019, in which it states that 'KH<sup>50</sup> advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPe<sup>51</sup>, submitted in November 2019, does not state that the DtC has been met or that KH advised that this was the case.
48. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective.

*If a Plan is found to have failed the Duty to Co-operate, is it possible to proceed with the Examination?*

49. The Secretary of State wrote to the Planning Inspectorate, on 18 June 2019, in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority.
50. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also stresses the importance of Inspectors working in a pragmatic way with Councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.
51. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to

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<sup>49</sup> SUP006d

<sup>50</sup> KH was Keith Holland of IPe, working on behalf of PAS.

<sup>51</sup> ED42B

proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.
53. For the reasons set out above the DtC set out in Section 33A has not been complied with.

## **Overall Conclusion and Recommendation**

54. The DtC in Section 33A of the 2004 Act has not been complied with for the reasons set out above and I, therefore, recommend that the Local Plan is not adopted.

*Karen L Baker*

Inspector



Neutral Citation Number: [2020] EWHC 3054 (Admin)

Case No: CO/1417/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13/11/2020

**Before :**

**MR JUSTICE DOVE**

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**Between :**

**Sevenoaks District Court**  
**- and -**  
**Secretary of State for Housing Communities and**  
**Local Government**

**Claimant**

**Defendant**

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**Ms Saira Kabir Sheikh QC and Charles Merrett (instructed by Sharpe Pritchard) for the**  
**Claimant**  
**Richard Moules (instructed by GLD) for the Defendant**

Hearing dates: Thursday 3rd September 2020  
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**Approved Judgment**

## **Mr Justice Dove :**

### Introduction

1. The claimant is a local planning authority who prepared the Sevenoaks District Local Plan (“the SDLP”) for its administrative area. The claimant challenges the decision of the Inspector appointed by the defendant to undertake the examination of the SDLP who concluded that the claimant had failed to comply with the duty to cooperate set out in section 33A of the Planning and Compulsory Purchase Act 2004. The claim is advanced by the claimant on four grounds. The first ground is that the Inspector erred in law in failing to apply a margin of appreciation when considering the test under section 33A of the 2004 Act. Ground 2 is the contention that the Inspector failed to correctly interpret and apply the duty to cooperate, and in reality conflated that duty with the requirement that a plan be sound. Ground 3 is that the Inspector failed to have regard to material considerations and in particular to consider the material evidence that was placed before her. Finally, Ground 4 is a challenge based on the contention that the Inspector’s reasons were inadequate.
2. This judgment will firstly set out the facts in relation to the case, secondly, rehearse the relevant legal framework and, thirdly, deal with the submissions advanced and the conclusions reached in relation to the four grounds on which this application is advanced.

### The facts

3. The claimant’s administrative area contains a significant element of Green Belt as well as areas which are designated as an Area of Outstanding Natural Beauty. Its district forms part of the West Kent Housing Market Area (the “HMA”) and has further functional and economic relationships with London boroughs to the north of its administrative area.
4. The claimant began the preparation of its proposed SDLP in 2015 and at that time the evidence for it started to be collected. In September 2015 a Joint Strategic Housing Market Assessment (“SHMA”) was published, having been prepared jointly for the HMA by the claimant together with the other local planning authorities in the HMA: Tunbridge Wells and Tonbridge and Malling Borough Councils. Other technical work in relation to the assessment of the Green Belt and provision for gypsies and travellers was prepared by the claimant. The claimant undertook two rounds of consultation under the provisions of Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012, the first in relation to issues and options in August 2017, and then a further consultation on the draft SDLP from July through to September 2018. In a witness statement before the court to explain the factual background to the preparation of the SDLP, James Gleave, who is the Strategic Planning Manager for the claimant, explains that at the Regulation 18 stage of plan preparation the extent of any unmet housing need as a result of the SDLP’s proposals was unknown “because views were still being gathered on what the Plan ought to contain and the council’s ‘call for sites’ process remained open until October 2018”. Thus, Mr Gleave observes, that it was not clear what proportion of unmet housing need might arise in the claimant’s district.

5. Between 8 December 2018 and 3 February 2019 the claimant undertook the consultation required by Regulation 19 of the 2012 Regulations on the SDLP in its proposed submission version. The proposed submission version identified that based upon the defendant's standard methodology the annualised housing need for the claimant's district was 698 dwellings, giving rise to a total of 13,960 dwellings over the 20-year plan period from 2015 to 2035. The housing land supply which was proposed in the SDLP was 10,568 dwellings or approximately 75% of the total housing need derived pursuant to the standard methodology. The plan was submitted for examination on the 30 April 2019.
6. For the purposes of the examination the claimant prepared a Duty to Cooperate Statement ("the Statement") setting out its case and the evidence in support of the conclusion that the duty to cooperate had been satisfied in the preparation of the SDLP. The Statement presents the evidence in a number of themes. Firstly, it alludes to the preparation of a joint evidence base, referring to the SHMA set out above and other studies and plans which were jointly prepared with relevant authorities. Secondly, the Statement refers to discussions which had occurred with a wide variety of statutory bodies ranging from Natural England and the Environment Agency to Highways England and Network Rail. The Statement then turns to discussions with neighbouring authorities. Reference is made to the Kent Planning Officer's Group as a forum (complemented by the Kent Planning Policy Forum) which meet regularly to discuss common issues in relation to plan making and allied concerns. Annexed to the statement are the notes of meetings with other public bodies, and in particular neighbouring authorities, which had occurred since the outset of preparation of the SDLP in 2015. The statement then records the statements of common ground which had been signed with a wide variety of local authorities and public bodies in respect of the various cross-boundary strategic issues which were engaged with the SDLP process. Alongside this documentation the Statement also set out discussions which had taken place at an elected member level with adjoining local authorities and briefings which had occurred with local MPs. Finally, the Statement also sets out the elements of peer review to which the SDLP process had been subject since the Regulation 18 draft consultation.
7. Whilst it is clear that the duty to cooperate, so far as it was relevant to the SDLP process, engaged a number of strategic issues, for the purposes of this judgment it is necessary to focus upon the strategic issue of housing need since, as will be seen, that was the issue which was principally of concern to the Inspector. In that connection it is necessary to set out the contents of the statements of common ground with, in particular, the neighbouring authorities of Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council, along with the conclusions of the peer review which was undertaken and relied upon in relation to the housing issue.
8. A statement of common ground was agreed between the claimant and Tonbridge Wells Borough Council on the 21 May 2019. Having set out the issue in relation to unmet housing need within the SDLP the statement of common ground records as follows:
  - “2.1.5 Discussions have taken place with neighbouring authorities in the HMA to discuss assistance with any unmet need, but no authority has been in a position to assist SDC with its unmet need.

2.1.6 TWBC is currently preparing its second Regulation 18 version of the Draft Local Plan for consultation, which includes the vision, objectives and growth strategy, overarching strategic policies, place shaping policies and detailed Development Management Policies.

2.1.7 TWBC is also constrained by the Green Belt (22%) and the Area of Outstanding Natural Beauty (70%) as well as areas of flood risk and traffic congestion. The Regulation 18 Draft Local Plan identifies the need for 13,560 dwellings in accordance with the Standard Methodology. Taking into account homes already built since 2013 and sites benefiting from planning permission and allocations within the existing Site Allocations Local Plan, TWBC is aiming to allocate land to meet the remaining balance of 8,914 (Note: this is still subject to change following ongoing work) dwellings. TWBC is seeking to meet its full objectively assessed need across the borough through development at a number of settlements, strategic release of Green Belt at Paddock Wood/Capel to allow expansion of the settlement and a new garden settlement within the Green Belt at Tudeley also within Capel Parish.

2.1.8 It is understood that, at present, TWBC is unable to assist SDC with unmet housing need, due to the constraints on both local authorities, and their inability to meet housing needs beyond their own, irrespective of unmet needs elsewhere.

2.1.9 Consequently, both councils will continue to work together and identify the position as both TWBC and SDC prepare to review their Local Plan every 5 years.

#### Actions

TWBC and SDC will engage through the wider Duty to Cooperate forum with other neighbouring authorities outside the West Kent housing market area in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London growth, large scale developments and opportunities for meeting any unmet need.

TWBC and SDC to each undertake a 5 year review of their respective Local Plans.”

9. The position in the statement of common ground is supported by the material contained within Tunbridge Wells Borough Council’s Hearing Position Statement for the purposes of the examination. The Hearing Position Statement observes that up until 11 April 2019 there had been discussions in relation to matters, including the meeting of housing need, and that those discussions were reflected in the observations made by Tunbridge Wells Borough Council during the Regulation 19 consultation, where they stated that there should be no presumption that there was any capacity within the Tunbridge Wells Borough Council area to accommodate unmet need from another

authority area. The Hearing Position Statement records that on the 11 April 2019 Tunbridge Wells Borough Council received a communication from the claimant formally asking whether or not they were in a position to meet any of the claimant's unmet housing need. At the duty to cooperate workshop on the 24 April 2019 (which is addressed further below) Tunbridge Wells Borough Council made clear that they would not be able to meet any of the claimant's unmet housing need. The Hearing Position Statement does however record as follows:

“1.06 It is considered pertinent to note that if the request from SDC to meet its unmet need had been made at any point prior to the submission of TWBC's comments on Sevenoaks regulation 19 representations then those representations would have addressed this issue more fully.”

The Hearing Position Statement goes on to record the observations made within the Statement of Common Ground and set out above and to indicate that the position from their perspective remained the same.

10. Tonbridge and Malling Borough Council also provided a hearing statement for the purposes of the examination. In their hearing statement they explain that during the consultations on both the Regulation 18 and Regulation 19 versions of their own Local Plan they had not received any request from the claimant to address unmet housing need. In the hearing statement they set out that there had been regular meetings between Tonbridge and Malling Borough Council and the claimant to address cross-boundaries strategic matters engaging the duty to cooperate. The essence of the position which they placed before the Inspector is set out in the following paragraphs of their hearing statement:

“13.5. It is evident that TMCB faces similar constraints and challenges to Sevenoaks District Council for that part of the Borough covered by the West Kent HMA. However, TMBC's response during plan-making has and continues to be significantly different to that of Sevenoaks District Council.

13.6. TMCB has responded positively to the Government's policy for plan-making by addressing in full its assessed need for housing plus some flexibility to adapt to rapid change. This is summarised in the TMBC Spatial Topic Paper. This has been challenging but TMBC understands that if suitable patterns of development are to be delivered and if the Local Plan is to positively address the acute need for housing, as demonstrated by the median housing affordability ratio, then sufficient sites need to be allocated for development to ensure there is no unmet need. This includes the removal of approximately 160 hectares of land from the Green Belt in the West Kent HMA to provide for residential development, as explained in the TMBC Green Belt Exceptional Circumstance Topic Paper.

13.7 Before addressing the matter of whether or not the unmet housing need could be accommodated in Tonbridge & Malling Borough it is important to first question whether it is reasonable

for Sevenoaks District Council to expect TMBC to address it. Given the similarities between the two authorities (see above), TMBC considers that it is entirely inappropriate to ask the Borough Council to accommodate unmet housing need in an area with the same constraints that have been dismissed by Sevenoaks District Council. It is important to bear in mind that the part of Tonbridge & Malling Borough falling within the West Kent HMA is wholly within the Green Belt (with the exception of the settlements not washed over by the designation).

13.8 If Sevenoaks District Council had adopted a similar positive approach to meeting the housing development needs of their area in full, it is possible that there would be significantly less or no unmet need to consider. It is unreasonable to expect TMBC to not only meet their assessed need for housing in full but to accommodate unmet housing need from Sevenoaks District Council who are facing similar constraints.

...

13.19 To conclude, it would be unreasonable to expect Tonbridge & Malling Borough Council to accommodate unmet housing need from Sevenoaks District Council given that TMBC is facing very similar constraints and challenges and is planning to address in full its own assessed housing need. Not only would it be unreasonable but factors including Housing Market Areas, market capacity and infrastructure mean that TMBC could not accommodate the identified unmet housing need.”

11. In addition to the contributions made by the local authorities directly concerned in the duty to cooperate, representations were also made, in particular to the examination process, by other parties who were interested in the issue. Representations were made both for and against the conclusion that the duty to cooperate had been satisfied in the present case. Whilst some reliance was placed upon this material by both parties at the hearing of this case, it suffices to record that there were a number of participants in the examination who maintained that the claimant had not complied with the duty to cooperate and that this was a fundamental flaw in the preparation of the SDLP.
12. As set out above the claimant placed reliance in support of its contention that the duty to cooperate had been satisfied upon the peer review of the plan process which had been commissioned as a cross-check in relation to the process. The first element of this work was the invitation extended by the Planning Advisory Service (“PAS”) to the claimant to participate in a pilot project in relation to the preparation of statements of common ground. This invitation was extended to and accepted by both the claimant and also Tonbridge Wells Borough Council and Tonbridge and Malling Borough Council. The programme led to a sequence of meetings, culminating in the preparation of notes reflecting the outcome of the project, dated the 3 April 2018. Paragraph 5.2 of the note of the discussions indicates that the need to address the matter of unmet housing need was acknowledged on all sides as the most significant issue that needed to be addressed in any statement of common ground between the parties. The note then considers the question of housing need in the three districts in the HMA, and from paragraph 6.1

onwards sets out the position in each of the authorities, and thereafter at paragraphs 8.4-8.5 notes the risks in the current position. The note provides as follows:

“6.1 Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017. In Sevenoaks the OAN of 11,740 (578 dpa) compares with an indicative figure of 13,960 (698 dpa) based on the government’s standardised methodology. In Tunbridge Wells the SHMA gives an OAN of 696dpa, which is consistent with the government’s indicative figure of 692 dpa using the proposed standard methodology.

6.2 The situation in Tonbridge and Malling is more complex. The evidence base, which includes an up to date SHMA covering 2 housing market areas, gives an OAN of 696 dpa. This is significantly lower than the indicative figure of 859 dpa using the proposed standardised methodology. Members have agreed to continue with 696 dpa figure. The Council accepts the standardised methodology and will reflect this as national policy in its Local Plan. However it proposes to demonstrate that the higher figure is undeliverable based on past trends and capacity issues. This position will be supported by evidence including the housing deliverability study prepared by G L Hearn in September 2017. The Council’s concerns are clarified in more detail in its consultation response to Planning for the Right Homes in the Right Places.

6.3 The emerging Tonbridge and Malling Local Plan, if it continues to propose a housing supply which is lower than the standardised OAN, clearly presents a risk to finalising an agreed SoCG. Whilst at present neither Sevenoaks or Tunbridge Wells will require Tonbridge and Malling to accept unmet need, it is possible that the reverse may apply. Even if all three Councils sign up to a SoCG which includes a lower housing figure for Tonbridge and Malling than the standard methodology indicates, this could be undermined when its Local Plan is examined.

...

8.4 The greatest risk to this SoCG is the decision by Tonbridge and Malling to continue plan for a level of housing supply which is below the OAN identified by the government’s standard methodology. As Tonbridge and Malling takes its Local Plan forwards it will be relying on evidence which states that capacity and delivery issues prevent it from states that capacity and delivery issues prevent it from meeting the higher OAN.

8.5 Whilst both Sevenoaks and Tunbridge Wells are aiming to meet their standard methodology OANs, both are heavily

constrained by green belt and infrastructure issues and are unlikely to be capable of accommodating unmet need from Tonbridge and Malling. This pilot project is not the appropriate place to address this matter in detail. However if the final SoCG is to have any real meaning and to be robust in supporting the three Local Plans there will need to be some hard talking within the group on this matter. This is a potential showstopper in terms of the utility of the SoCG and its capability of serving its desired purpose”

13. At a later stage it emerged that the note of the 3 April 2018 (which the claimant had included within the appendixes to the statement) had in fact been superseded in a subsequent note dated 10 April 2018. It seems that the representative of Tonbridge and Malling Borough Council had, in response to receipt of the 3 April 2018 draft, made suggestions in relation to amendments to the draft, including the observation that the claimant would have elements of unmet housing need. Thus, paragraphs 6.1 and following of the note were redrafted as follows:

“6.1 During the short lifespan of this pilot project there have been several changes to both the policy background, for example the revised draft of the NPPF issued for consultation on 5 March 2018 and to the emerging evidence base which will support the three Local Plans. Consequently the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue. The current situation, at the end of the pilot project, is as follows.

#### Sevenoaks DC

6.2 In Sevenoaks the OAN of 12,400 compares with an indicative figure of 13,960 based on the government’s standardised methodology. With Regulation 19 submission planned to take place in early 2019 it likely to fall outside the NPPF transition period, therefore the higher figure will apply. However the district is highly constrained, with 93% of the district lying within the Green Belt and 60% within AONBs.

6.3 The Council is currently examining the potential of releasing some Green Belt land where a convincing exceptional circumstances case is made. This would mean that any proposed development would need to deliver evidenced social and community benefits as well as housing. Sites where this might be the case will be the subject of Regulation 18 consultation. This may increase the housing land supply but it remains unlikely that Sevenoaks DC Tonbridge and Malling DC will be able to meet its housing need in full.

#### Tonbridge and Malling BC

6.4 The evidence base for the Tonbridge and Malling Local Plan, which includes an up to date SHMA covering two housing

market areas, gives an OAN of 696 dpa. This is significantly lower than the indicative figure of 859 dpa using the proposed standardised methodology. However the position has changed since the pilot project began with the revised NPPF draft proposing a transitional period for introducing the standardised methodology of assessing housing need. Provided the Regulation 19 submission can be made within the transition period, as proposed by the Council, then the lower locally derived OAN can be used. This level of housing growth is considered deliverable.

#### Tunbridge Wells BC

6.5 When the pilot project commenced Tunbridge Wells BC was planning to meet its locally derived OAN as determined by the joint SHMA which was updated in 2017. The SHMA sets an OAN of 696 dpa for Tunbridge Wells, which is consistent with the government's indicative figure of 692 dpa using the proposed standard methodology. Recently updated evidence on strategic flood risk suggests that some re appraisal may be necessary, but the Council is still endeavouring to ensure that it can meet its own housing need.

#### Summary

6.6 Each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling BC is confident that it can meet its need, Sevenoaks DC and Tunbridge Wells BC have not yet completed the work needed to determine whether or not they can meet their housing need. Thus the Councils are not yet in a position to reach agreement on their housing needs. The councils are not yet in a position to reach agreement on the matter of housing supply.”

14. In autumn 2018 the claimant commissioned Intelligent Plans and Examinations (IPE) to undertake a review of the Regulation 18 draft of the SDLP, with a particular focus on the Green Belt and the question of exceptional circumstances. A meeting was held on 1 November 2018, and on the 4 December 2018 Ms Laura Graham, who had undertaken the review, produced a report of her advice. Within that advice she noted that there was “no absolute requirement in the NPPF to meet housing need”, but that if development needs could not be met outside the Green Belt it would be necessary to demonstrate through the sustainability appraisal process that the consequences of not meeting that need had been fully and properly addressed.
15. On the 17 December 2018 the claimant contacted the Planning Inspectorate (“PINS”) with a view to arranging an advisory visit in order to assess the plan which was at that stage in the midst of the Regulation 19 consultation (the Regulation 19 consultation closed on the 4 February 2019). On the 6 February 2019 the advisory visit from PINS was undertaken by an experienced Inspector, Mr Jonathan Bore. One of the important topics for discussion at that meeting was the change that the claimant was considering to altering the base date of the SDLP to 2019-35. The note of the advisory visit identifies

that the plan fell seriously short of meeting its housing need in full, based upon the standard method. In relation to the duty to cooperate the note of the meeting records as follows:

“The Duty to Cooperate

Sevenoaks haven’t sent formal letters asking other authorities to accommodate unmet need. They say they don’t want to, because no authorities are willing to help with unmet need and asking the question would sour relations with them. Some neighbouring authorities such as Tandridge may also have unmet need. There is a SoCG with other authorities and a MOU with Maidstone, but the Council did not say that there is constructive engagement among the neighbouring authorities to resolve the issue, nor could they point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated.”

16. The note goes on to record the comments on the issues made by Mr Bore at the meeting. In particular, within the comments on the issues he noted as follows:

“If the OAN really could not be accommodated within the District, I said that there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis. Currently, despite the MoU and SoCGs, this did not appear to exist in a positive form. I said that any Inspector would look closely at this in regard to whether the Duty to Cooperate had been fulfilled.”

17. The advisory visit by Mr Bore on behalf of PINS was followed by correspondence from the defendant seeking to understand how the visit had gone, and offering assistance from PAS in relation to guiding the future progress of the plan. This correspondence led to a meeting on the 6 March 2019 between Mr Gleave and a colleague from the claimant and representatives of the defendants. The notice of the meeting of the 6 March observes as follows:

“Sevenoaks asked whether MHCLG meets with LPAs on a regular basis following an Advisory Visit or whether there were particular concerns with the emerging Sevenoaks plan. MHCLG explained that following the AV the Department had been made aware that there were some potentially significant issues with housing numbers and Duty to Co-operate, and constraints including Green Belt. Given these could be potential ‘showstoppers’ MHCLG wanted to talk through the issues, find out what further work Sevenoaks may be doing in respect of these and to discuss whether there is any assistance MHCLG could provide as the authority prepares its plan for submission.

In terms of the Duty to Co-operate, Sevenoaks explained they had met regularly with neighbouring authorities at Officer and Member level to discuss x-boundary issues, of which housing

need was a standing item on the agenda. In addition, a regular Kent-Planning Officers Group was held at Kent County Council. This operates along similar lines to the ALBPO forum in London and serves to update colleagues on Local Plan preparation. Statements of Common Ground are currently being prepared with neighbours on strategic cross-boundary matters, including housing need.

...

DR advised that the balance between protecting the environment and meeting housing needs was a planning judgement that had to be made locally. SH set out that the approach the LPA took would need to be justified, both in terms of why the authority was unable to meet its own needs and the reasons behind neighbouring authorities not being asked to accommodate some of Sevenoaks needs.”

18. On the 11 April 2019 Mr Gleave, on behalf of the claimant, wrote to neighbouring planning authorities in relation to the progress that was being made in respect of the plan. They were also invited to an event which was being facilitated by PAS to be held later in the month. The correspondence contains the following in relation to the duty to cooperate:

“The Council is of the view that all authorities bordering Sevenoaks, and Kent County Council, have engaged actively and on an on-going basis to meet the provisions of the Duty to Co-operate. In particular, Statements of Common Ground (SoCGs) are in the process of being agreed to formally clarify if it is possible to meet unmet housing needs from adjoining areas. Notwithstanding the provisions of the SoCG and for the sake of completeness, I write to formally ask if is in a position to meet any of Sevenoaks’ unmet housing need as outlined above. In the event that this is not possible, I would also be grateful for your views on the preparation of a joint sub-regional strategy to address future housing requirements.”

19. The duty to cooperate workshop took place on the 14 April 2019 and a note was prepared minuting the meeting. An experienced former Inspector, Mr Keith Holland, facilitated the workshop. Updates were provided by the local planning authorities who attended and, in particular, the update from the claimant identified that the SDLP housing supply left a shortfall measured against the standard methodology requirement of approximately 1,900 dwellings across the plan period, equating to about 17%. The claimant provided a summary of the activities which they had undertaken in order to address the duty to cooperate. Following discussion of the issues a note records Mr Holland advising that in his view “SDC has done all it can and is able to demonstrate that it has satisfied the duty to cooperate requirement”. This note of the workshop then records further discussions in relation to the potential to a sub-regional strategy to address unmet housing needs across the area.

20. A note of these meetings held with PAS was also provided by IPe who undertook the work for PAS. Their note covers both the meeting which was held on the 17 April 2019 and a first meeting between Mr Gleave and his colleagues on behalf of the claimant and Mr Holland. The claimant's position as expressed in the SDLP was explained to Mr Holland in the meeting on the 17 April 2019 and noted as follows:

“2.2 The discussion focussed on the implications of the DtC for the soundness assessment of the SLP. At the time of the meeting, the Council's intention was to submit the SLP for examination at the end of the month (it was subsequently submitted on 30 April 2019). The discussion included a review of advice provided by Laura Graham of IPe and Jonathan Bore from the Planning Inspectorate (PINS). SDC feels that there is a degree of inconsistency between the PINS advice and that provided by IPe. SDC believe that the advice from PINS is based on a misunderstanding of the approach being adopted by the SDC. In the view of the SDC, PINS failed to fully appreciate that the council attempts unmet housing need as an exceptional circumstance justifying consideration of Green Belt (GB) land release. What PINS calls a “Council imposed impediment” (the provision of infrastructure for the existing community) is not the defining exceptional circumstance consideration – it is simply the logical requirement that any development in the GB needs to be accompanied by adequate infrastructure. In other words, SDC believes that PINS has placed too much emphasis on the infrastructure point and not enough on the unmet need consideration.”

21. The note prepared by IPe in relation to the workshop on the 14 of April 2019 provides as follows in relation to the views expressed in respect of the duty to cooperate:

“3.3 The message regarding the importance of the DtC and the way it is dealt with at local plan examinations was repeated. All parties present appreciate how important the local duty is and how it has the potential to derail examinations. Each of the councils present outlined the position they are in at present regarding their development plans. From the discussion, it is clear that none of the authorities present are in a position to help meet any unmet housing need generated by SDC. In fact, most of the authorities believe that they are unlikely to be able to meet their own needs. The discussion thus confirmed and reinforced the contention made in the Submission version of the SLP that the Council is unable to meet its own needs and cannot rely on the DtC to resolve the problem. The importance of preparing a clear and convincing narrative for the forthcoming SDC local plan examination was again stressed.

3.4 The importance of continuing to seek to meet development needs in West Kent through cooperative strategic working was discussed. In this regard, the need for a strategic approach to infrastructure was emphasised. KH explained the importance of

getting member involvement and buy-in to any strategic work and that the more formal the process, the more likely it was to convince a local plan examiner that the councils are doing all they can to use the DtC effectively. Cllr Piper expressed severe reservations about the likelihood of effective strategic planning because of what he described as an inconsistency between the political message provided by the government regarding the GB and the guidance in the NPPF. KH pointed out that under the DtC there is nothing to stop local authorities undertaking joint strategic planning of the sort that previously happened in the South East through SERPLAN (London and South East Regional Planning Conference). KH also explained that the policy in the NPPF makes it clear that where there are exceptional circumstances local authorities can revise GB boundaries, but that this must be done through their local plans and not through the development management process.”

22. On the 30 April 2019 the plan was submitted for examination. As set out above Statements of Common Ground with neighbouring authorities were produced as part of the examination process. The examination hearing sessions commenced on the 24 September 2019, and issues in relation to the duty to cooperate were canvassed on the first day of the hearing. On the 14 October 2019 correspondence was received by the claimant from the Inspector raising concerns that she had in relation to whether or not the claimant’s approach to the SDLP had met the requirements of the duty to cooperate. There then followed further correspondence between the claimant and the Inspector which it is unnecessary to rehearse in detail for the purposes of this judgment. Suffice to say, that during the course of that exchange of correspondence the claimant provided detailed responses and further documentation including, for instance, the corrected note of the 10 April 2018. By the 13 December 2019 the Inspector had confirmed her view that the claimant had not discharged the duty to cooperate and therefore indicated that unless the claimant intended to withdraw the plan from examination the only course available was for her to produce a report concluding that the plan was not legally compliant. On the 3 January 2020 the claimant requested that the Inspector issue her report as soon as possible. This led to the production of the Inspector’s final report issued to the claimant on the 2 March 2020 and comprising the decision which is the subject of this challenge.
23. The Inspector’s final conclusions in relation to the issues with respect to the duty to cooperate are set out in the decision which is under challenge. In order to provide the full context for the Inspector’s decision it is necessary to set out her conclusions at some length. At the outset of her decision the Inspector set out that the starting point for the examination was the assumption that the local authority had submitted what it considered to be a legally compliant and sound plan. She confirmed that this was the basis for her examination. She further set out by way of introduction that having reached conclusions in relation to the duty to cooperate she did not go on to consider whether the plan was sound or was compliant with other legal requirements. She points out that if the local planning authority cannot demonstrate that the duty to cooperate has been complied with then, under section 20(7A) of the 2004 Act, the examiner is bound to recommend non-adoption of the local plan. In her decision the Inspector addresses the evidence in relation to the duty to cooperate in the following paragraphs:

“17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.

18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement and Appendices and in Appendix 1: Schedule A attached to its letter, dated 18 November 2019, with the minutes of most of these meetings provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group and the West Kent Statement of Common Ground (SoCG) Pilot Programme group.

19. The minutes of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues and Options (Regulation 18), do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPE), held on 22 January 2018, set out in the Facilitator’s Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

20. The notes of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks ‘is testing options to assess the way forward’. The summary of the meeting, held on 14 March 2018, set out in the Facilitator’s Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

The Facilitator's Note does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.

21. The Council has since stated, in Appendix 1: Schedule A to its letter, dated 18 November 2019, that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect, as it referred to Sevenoaks District Council planning to meet its OAN in full. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that 'the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue'. Paragraph 6.6 concludes that, 'each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need. Thus, the Councils are not yet in a position to reach agreement on the matter of housing supply'. As such, it is apparent that, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.

23. The minutes of the West Kent DtC meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the DtC meetings refer to addressing the unmet need in Sevenoaks is at the DtC meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted that 'officers discussed the potential requirement for a follow up letter to

request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.

24. Although the DtC statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.

25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>1</sup> within the HMA.

26. In paragraph 13.2 of its HPS, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers 'did not receive any formal requests to address unmet housing need' from Sevenoaks District Council.

27. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need

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following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.

28. In paragraph 1.04 of its HPS, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.

29. I appreciate that these neighbouring authorities say that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.”

24. The Inspector went on to address the statements of common ground which had been prepared in order to deal with cross-boundary issues. Her conclusion in relation to those statements of common ground is set out as follows:

“32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email to MHCLG, dated 15 March 2019, the Council says that it ‘is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.’ However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They imply that these matters will be dealt with in any review of the Plan. However, the Duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination.

33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.

34. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents engagement in relation to a solution in the future, not the submitted Plan. At the DtC Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders' meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan.”

25. The Inspector then proceeded to consider the question of the timing of the engagement in relation to, in particular, the extent of unmet housing need which was the strategic issue at the heart of her concerns in relation to the duty to cooperate. She sets out her conclusions in relation to this issue in the following paragraphs:

“35. The Council refers to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. The Council says, in its letter dated 18 November 2019, that it ‘could have gone back to neighbours at this point’, but decided not to, as it was felt that, as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated, ‘it was therefore extremely unlikely that a higher unmet need would be met elsewhere’. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.

36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that ‘all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other’ at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that ‘at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The

best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.’ However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.

37, The full extent of unmet need only became apparent to the Council following the consideration to the responses of the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs. This would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage. However, there is no evidence to show that this occurred. Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have been able to accommodate some of Sevenoaks’ unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.

39. It is noted that neighbouring authorities have not indicated any willingness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks’ housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been

significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need.”

26. The Inspector then proceeded to consider the peer review processes which had been undertaken by the claimant, in terms of external advice from IPE in November 2018, the PINS advisory visit in February 2019, the advice which had been received from the defendant and the review of the plan and the PAS workshop which had occurred on the 24 April 2019. Dwelling initially on the PAS workshop, and subsequently focusing on the other elements of peer review, the Inspector's conclusions are set out as follows:

“42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan, prepared by IPE, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement. This note concludes that ‘none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working’.

43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, the PAS Workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.

44. The Council says that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, significant concerns were raised in relation to the DtC at the Advisory Visit carried out by the Planning Inspectorate in February 2019, as set out in the note of this meeting.

44. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet

need and that it could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

45. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS Workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the DtC Statement was not submitted until May 2019. Nor would it have had the benefit of the time available to an Inspector for the examination of that detailed and complex evidence or the discussion at the Hearing sessions.

46. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement in which it states that 'KH advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPE, does not state that the DtC has been met or that KH advised that this was the case.

47. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective."

27. The final point addressed by the Inspector was whether it would be possible to proceed with the examination, applying the defendant's indication in correspondence with PINS that Inspectors should be pragmatic in getting plans into place. Her conclusions in relation to this point, and indeed the position overall, are set out in the following paragraphs of her decision.

"49. The Secretary of State wrote to the Planning Inspectorate, on 18 June 2019, in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority.

50. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also

stresses the importance of Inspectors working in a pragmatic way with Councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.

51. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.

53. For the reasons set out above the DtC set out in Section 33A has not been complied with.”

28. In the light of these conclusions the Inspector reached the overall decision that the duty to cooperate had not been complied with and therefore she was bound to recommend that the plan not be adopted.

The law

29. The SDLP, as a development plan document, has to be prepared in accordance with the provisions contained within Part 2 of the Planning and Compulsory Purchase Act 2004. Section 19 of the 2004 Act sets out certain requirements in relation to the contents of a development plan document. The relevant provisions of section 20 of the 2004 Act in relation to independent examination are as follows:

“20. Independent examination

(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.

(2) But the authority must not submit such a document unless-

(a) they have complied with any relevant requirements contained in the regulations under this Part, and

(b) they think the document is ready for independent examination.

...

(4) The examination must be carried out by a person appointed by the Secretary of State.

(5) The purpose of an independent examination is to determine in respect of the development plan document-

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound and

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.

...

(7) Where the person appointed to carry out the examination-

(a) has carried it out, and

(b) considers that, in all circumstances, it would be reasonable to conclude-

(i) that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, and

(ii) that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation, the person must recommend that the document is adopted and given reasons for the recommendation.

(7A) Where the person appointed to carry out the examination –

(a) has carried it out, and

(b) is not required by subsection (7) to recommend that the document is adopted, the person must recommend non-adoption of the document and give reasons for the recommendation.

(7B) Subsection (7C) applies where the person appointed to carry out the examination-

(a) does not consider that, in all circumstances, it would be reasonable to conclude that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, but

(b) does consider that, in all circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation.

(7C) If asked to do so by the local planning authority, the person appointed to carry out the examination must recommend modifications of the document that would make it one that-

(a) satisfies the requirements mentioned in subsection (5)(a), and

(b) is sound.”

30. As can be seen from the provisions of section 20, of particular note for present purposes is the provision contained in section 20(5) that the purpose of the independent examination includes an examination of whether the plan is sound, and also whether the local planning authority has submitted a document that has been prepared in compliance with the duty under section 33A of the 2004 Act in relation to its preparation. By virtue of the provisions contained within section 20(7), (7B) and (7C), where the Inspector determines that it would not be reasonable to conclude that the local planning authority had complied with the section 33A duty then the Inspector can neither recommend modifications nor adoption of the document. This is in effect what happened in the present case.

31. It is not disputed that the duty under section 33A of the 2004 Act applied to the preparation of the local plan by virtue of section 33A(3) of the 2004 Act. The nature and content of the duty is described in the following provisions of section 33A:

“33A Duty to co-operate in relation to planning of sustainable development

(1) Each person who is—

(a) a local planning authority,

(b) a county council in England that is not a local planning authority, or

(c) a body, or other person, that is prescribed or of a prescribed description, must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising

the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

(3) The activities within this subsection are—

(a) the preparation of development plan documents,

(b) the preparation of other local development documents,

(c) the preparation of marine plans under the Marine and Coastal Access Act 2009 for the English inshore region, the English offshore region or any part of either of those regions,

(d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs

(a) to (c) that are, or could be, contemplated, and

(e) activities that support activities within any of paragraphs (a) to (c), so far as relating to a strategic matter.

(4) For the purposes of subsection (3), each of the following is a “strategic matter”—

(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and

(b) sustainable development or use of land in a two-tier area if the development or use—

(i) is a county matter, or

(ii) has or would have a significant impact on a county matter.”

32. It will be noted from section 33A(7) that a person who is seeking to comply with the duty to cooperate must have regard to guidance issued by the defendant on how that duty is to be complied with. Material in that regard is contained both within the National Planning Policy Framework (“the Framework”) and in the Planning Practice Guidance

(“the PPG”). The relevant provisions of the Framework dealing with the duty to cooperate are set out in paragraphs 24-27 of the Framework as follows:

“Maintaining effective cooperation

24. Local planning authorities and county councils (in two-tier areas) are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries.

25. Strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans. They should also engage with their local communities and relevant bodies including Local Enterprise Partnerships, Local Nature Partnerships, the Marine Management Organisation, county councils, infrastructure providers, elected Mayors and combined authorities (in cases where Mayors or combined authorities do not have plan-making powers).

26. Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

27. In order to demonstrate effective and on-going joint working, strategic policy making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.”

33. Whilst addressing the provisions of the Framework it is worthwhile at this stage to note that the claimant’s argument includes the contention that the Inspector confused the requirements of the duty to cooperate with the examination of soundness required pursuant to the provisions of section 20(5). The policy in relation to whether or not a plan is sound is to be found in paragraph 35 of the framework in the following terms:

“35. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs and is informed by agreements with other authorities, so that

unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework.”

34. Turning to the PPG, it contains a considerable amount of guidance relating to the preparation of statements of common ground including their contents, subject matter and format. Of particular relevance to the issues in the present case are the provisions of the PPG dealing with the question of whether or not local planning authorities are required to reach agreement on strategic matters, and what should be done if they are unable to secure such agreements. The parts of the PPG dealing with this point are as follows:

“Are strategic policy-making authorities required to reach agreement on strategic matters, and what should an authority do if they are unable to secure these agreements?”

Strategic policy-making authorities should explore all available options for addressing strategic matters within their own planning area, unless they can demonstrate to do so would contradict policies set out in the National Planning Policy Framework. If there they are unable to do so they should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their plans for examination. Authorities are not obliged to accept needs from other areas where it can be demonstrated it would have an adverse impact when assessed against policies in the National Planning Policy Framework.

Inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or are not relying on the inspector to direct them. Where a strategic policy-making authority claims it has reasonably done all that it can to deal with matters but has been unable to secure the cooperation necessary, for example if another authority will not cooperate, or agreements cannot be reached, this should not prevent the authority from submitting a plan for examination. However, the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any

outcomes achieved; this will be thoroughly tested at the plan examination.”

35. In *Zurich Assurance Limited v Winchester City Council* [2014] EWHC 758 Sales J (as he then was) explained both the substance of the obligation imposed by section 33A and the role of the court in a challenge of the kind presently under consideration in the following terms:

“109. The duty to co-operate imposed by section 33A applies (so far as relevant in this case) in respect of the preparation of development plan documents “so far as relating to a strategic matter” (subsection (3)), as defined in subsection (4) (“sustainable development or use of land that has or would have a significant impact on at least two planning areas, [etc]”). The question of whether development or use of land would have a significant impact on two planning areas is a matter of planning judgment.

110. The obligation (see subsection (1)) is to co-operate in “maximising the effectiveness” with which plan documents can be prepared, including an obligation “to engage constructively [etc]” (subsection (2)). Deciding what ought to be done to maximise effectiveness and what measures of constructive engagement should be taken requires evaluative judgments to be made by the person subject to the duty regarding planning issues and use of limited resources available to them. The nature of the decisions to be taken indicates that a substantial margin of appreciation or discretion should be allowed by a court when reviewing those decisions.

111. The engagement required under subsection (2) includes, in particular, “considering” adoption of joint planning approaches (subsection (6)). Again, the nature of the issue and the statutory language indicate that this is a matter for the judgment of the relevant planning authority, with a substantial margin of appreciation or discretion for the authority.

112. WCC was required to have regard to the guidance about co-operative working given in the NPPF: subsection (7).

113. The limited nature of the role for the court in a case like the present is reinforced by the structure of the legislation in relation to review of compliance with the duty to co-operate under section 33A. The Inspector is charged with responsibility for making a judgment whether there has been compliance with the duty: section 20(5)(c) of the 2004 Act. His task is to consider whether “it would be reasonable to conclude” that there has been compliance with the duty: section 20(7)(b)(ii) and (7B)(b). A court dealing with a challenge under section 113 of the Act to the judgment of an inspector that there has been such compliance is therefore limited to review of whether the inspector could

rationally make the assessment that it would be reasonable to conclude that there had been compliance by a planning authority with this duty. It would undermine the review procedures in the Act, and the important function of an inspector on an independent examination, if on a challenge to a plan brought under section 113 the court sought to circumvent this structure by applying any more intrusive form of review in its own assessment of the underlying lawfulness of the conduct of the planning authority itself. A rationality standard is to be applied in relation to the decision made by the Inspector and in relation to the underlying decision made by WCC.”

36. In the subsequent case of *Trustees of the Barker Mill Estates v Test Valley Borough Council* [2017] PTSR 408 Holgate J endorsed and adopted the analysis of Sales J in *Zurich Assurance* (see paragraphs 55-57). Since the claimant places some reliance upon the conclusions of Holgate J in relation to the particular facts of that case it is necessary to set out Holgate J’s agreement in summary with Sales J, and then his analysis of the issues which arose in that case and how he resolved them. These points are dealt with in the following paragraphs of his judgment:

“58. In agreement with Sales J I consider that:—

(i) The question posed by section 20(7B)(b) of PCPA 2004 is a matter for the judgment of the Inspector;

(ii) The Court's role is limited to reviewing whether the Inspector could rationally make the assessment that

(ii) The Court's role is limited to reviewing whether the Inspector could rationally make the assessment that it would be “reasonable to conclude” that the LPA had complied with section 33A ;

(iii) It would undermine the structure of PCPA 2004 and the procedure it provides for review by an independent Inspector if, on a challenge made under section 113 , the Court sought to apply a more intrusive form of review in its assessment of the underlying lawfulness of the LPA's conduct or performance; form of review in its assessment of the underlying lawfulness of the LPA's conduct or performance;

59. The challenge under ground 2 is therefore directed to the Inspector's report, in particular paragraphs 10 to 14 where he stated:—

“10. On the first day of the Hearing a submission was made by a representor to the effect that the Council had failed in relation to the DtC [the duty to co-operate]. This was discussed in some detail at the Hearing, and in public correspondence between the representor, the Council and myself. The most important element of this submission was that the Council's identified affordable

housing need figure is 292 dwellings per annum (d.p.a.) (clarified by MM/5/1 ), with certain caveats, whereas the expected provision is 206 d.p.a. The Council put forward reasons for this position, but the DtC issue relates to the fact that the Council had not asked neighbouring authorities whether they could accommodate some or all of the identified shortfall.

11. There is nothing to suggest the extent to which any shortfall in affordable housing provision within Test Valley would lead to displaced demand affecting some or all of the eight adjoining authorities.

12. The objective of the DtC is to maximise the effectiveness of the plan making process. In this case the overall manner in which the Council has worked with other authorities, particularly but not exclusively in the southern part of the Borough, is impressive. In the light of their considerable experience, Council officers presented me with a very clear picture of the position of adjoining authorities in relation to affordable housing. To have made a formal request to adjoining authorities for assistance with affordable housing, when the Council knew full well what the answer would be, would not have been effective or productive.

13. In subsequent correspondence the representor also stated that there would be a shortfall in market housing, and that the DtC would additionally be triggered in this respect. However, as I conclude (below) that the RLP will meet the full OAN for market housing, this matter does not trigger the DtC.

14. The Council has clearly taken into account the wider strategic context and the interrelationships with neighbouring areas, particularly in terms of housing markets and employment patterns. I am satisfied that the Council has engaged constructively, actively and on an ongoing basis with relevant local authorities and organisations, and I conclude that the DtC has been met.

...

60. The Claimants submit that where an LPA cannot meet its own FOAN for affordable housing then it must “explore under the ambit of the duty to co-operate whether any unmet needs can be met within adjacent LPAs” (paragraph 68 of skeleton). The proposition is said to be based upon paragraphs 104 and 106 of the judgment of Hickinbottom J in *Gallagher* . But in fact the Judge did not determine any issue in relation to section 33A nor did he lay down the proposition for which the Claimants contend.

61. It is to be noted that the Claimants' proposition is limited in scope. This is not a case where non-compliance with section 33A is said to have occurred because the Defendant failed to address

the inclusion of a policy in its plan for meeting needs arising outside its area. The Claimants simply argue that TVBC should have “explored” with other LPAs the issue of whether the shortfall in meeting the FOAN for affordable housing in its area could be dealt with in their areas. In essence, this is the same complaint as that raised at the Examination, namely that TVBC failed to put this question to the other authorities.

62. The Claimants were not at all precise as to what the use of the term “explore” should be taken to mean, although it lies at the heart of the ground of complaint. By implication the Claimants recognise that TVBC was not in a position to complete other authorities to provide for TVBC's shortfall and that they might legitimately say that they were unable to assist. Here the word “explore” suggests obtaining sufficient information about affordable housing needs in the areas of other LPAs and their ability to satisfy their own needs and any additional needs from other areas. In the light of that information a plan-making authority could decide, as a matter of judgment, whether it would be worthwhile to pursue negotiations with one or more other authorities to assist with its shortfall.

63. In this case the Claimants made no attempt to show the Court that TVBC either lacked this information or that, in the light of the information it had, TVBC's judgment that there was no point in pursuing negotiations with other authorities on this point was irrational. In his reply, Mr Cahill QC confirmed that the only criticism of the Inspector's report is one of irrationality and is limited to the last sentence of paragraph 12, in which he had said that there had been no need for TVBC to make a “ formal request” to adjoining authorities when it knew full well what the answer would be. He also stated that no legal criticism is made of the penultimate sentence of paragraph 12 in which the Inspector said that TVBC's officers had given him a very clear picture of the position of adjoining authorities in relation to affordable housing.

64. In fact, paragraph 12 is a summary of what the Inspector had been told during the Examination. In inquiry document IN009 (dated 19 December 2014) the Inspector explained that the extent of cross-boundary working had been explained by TVBC not only in its “Duty to Co-operate Statement” but also in the Hearing sessions, including one devoted to affordable housing. TVBC had been actively engaged in the production of a number of informal strategies and evidence based studies with other authorities and stakeholders. The extent of the working with other authorities was described by the Inspector as “impressive”. It was from this information that he reached the judgment that TVBC's officers were “fully aware that other authorities would not be in a position to assist with any shortfall”. Plainly the

Inspector relied upon this information when writing paragraph 12 of his Report on the Examination.

65. When paragraph 12 of the Report is read properly in the context of the material which was before the Examination, the Inspector, in his review of TVBC's performance, was entitled to reach the conclusions that (i) they had obtained sufficient information from the cross-boundary work which had in fact taken place on whether adjoining authorities would be able to provide affordable housing to meet any part of needs arising within TVBC's area and that (ii) it would have been pointless to make a "formal request" for assistance in meeting TVBC's shortfall. It is impossible for the Court to treat to Inspector's conclusions as irrational and so ground 2 must be rejected."

37. In *R(on the application of St Albans City and District Council) v SSCLG and others* [2017] EWHC 1751 Sir Ross Cranston dealt with an application for judicial review in which it was contended that an Inspector's conclusion that the duty to cooperate had not been satisfied was unlawful. The factual circumstances of that case involved the claimant's argument that the Inspector had failed to properly take into account the polarised position or impasse which had emerged in relation to contentions between the claimant and the adjoining local planning authorities with respect to the housing market. Having accepted and endorsed the approach taken in *Zurich Assurance* and *Trustees of Barker Mills*, Sir Ross Cranston concluded that the reasons provided by the Inspector demonstrated that he was fully aware of the disagreement between the council and adjoining local planning authorities in relation to the definition of the housing market area and appreciated the issue. The judge was satisfied that the decision adequately reasoned the conclusions that the Inspector had reached. In paragraph 51 of the judgment Sir Ross Cranston went on to accept the defendant's submission "that once there is disagreement, I would add even fundamental disagreement, that is not an end of the duty to cooperate". He concluded that the duty to cooperate remained active and ongoing "even when discussions seemed to have hit the buffers". Whilst in reaching this conclusion he placed some reliance on a decision of Patterson J in *R(on the application of Central Bedfordshire Council) v SSCLG* [2015] EWHC 2167 (Admin), which the parties in the present case accepted could not be authoritative as it was a permission decision which did not contain a statement that it could be cited in accordance with the Practice Direction on the Citation of Authorities, 9 April 2001 and, furthermore, was overturned by the Court of Appeal in granting permission to appeal.. Nonetheless the observations of Sir Ross Cranston are in my judgment properly capable of being considered as free standing, relevant and reliable, bearing in mind the fact-sensitive nature of the judgment which has to be reached in each individual case in which the duty to cooperate is being examined, and taken in the context of the particular facts of the case he was considering.

#### Submissions and conclusions

38. On behalf of the claimant Ms Saira Kabir Sheikh QC advances the case on four grounds. The first ground is that the Inspector failed when reaching her conclusions to apply the margin of appreciation which ought to be afforded to the claimant pursuant to section 33A of the 2004 Act. It is Ms Sheikh's submission, based upon both the wording of the statute and also the decisions in *Zurich Insurance* and *Barker Mills*, that when

considering whether or not the claimant had discharged the duty to cooperate in preparing the plan the Inspector was required to afford a margin of appreciation to the claimant and she failed to do so. In particular Ms Sheikh relies upon the contention that the Inspector sought to substitute her own judgment for that of the claimant and adjoining authorities where, for instance, in paragraph 29 of her report she concludes that, notwithstanding the fact that the adjoining authorities indicated that there had been regular constructive and cooperative liaison, she was not satisfied that that had in fact taken place. The discarding of the opinions of adjoining authorities demonstrated that the Inspector had failed to afford the claimant the margin of appreciation to which it was entitled.

39. Moreover, Ms Sheikh disputes the contention that the Inspector applied the correct test in reaching her conclusions: whilst the Inspector made assertions about unmet housing need being met elsewhere outside the claimant's administrative area, in reality the claimant was fully aware from its engagement with neighbouring authorities that there was no possibility of unmet housing need being met elsewhere. The Inspector's approach, for instance in paragraph 37 of her report, demonstrates that the Inspector's focus was upon what a local planning authority might do in the event of unmet housing need arising and was not focused on the particular circumstances of the claimant and its own knowledge and judgment as to what might be expected from any dialogue with adjoining authorities. Effectively, the whole tenor of the Inspector's report reflects the substitution of her own judgment for that of the claimant, without affording the claimant the margin of appreciation to which they were entitled.
40. Ms Sheikh also contends that her approach to the statements of common ground illustrated a similar error. The statements of common ground illustrated the depth and extent of the claimant's engagement with adjoining authorities, and her assertion that these had been drafted too late to influence the plan misunderstood both her role and the proper approach to be taken to the duty to cooperate.
41. In response to these submissions Mr Richard Moules, on behalf of the defendant, submits that when the Inspector's report is read as a whole it is clear that she has applied the correct approach. She started from the proposition that the plan had been submitted by the claimant in what it considered to be a legally compliant and sound form. In paragraph 37 of her report she clearly applied the test of what it was "reasonable to expect" the claimant to have done in the circumstances which arose. Fundamentally, Mr Moules submits that the present case had little to do with the margin of appreciation, on the basis that the Inspector's judgment as to what the claimant had done demonstrated that in fact they had done nothing constructive to explore addressing unmet housing need at the appropriate time during the plan's preparation. The Inspector concluded that the claimant could reasonably have been expected to do something in the circumstances which arose when the extent of unmet need emerged, but in fact did nothing.
42. Moreover, Mr Moules maintains that the Inspector was entitled to scrutinise the assertions of the adjoining authorities and if she concluded that, having evaluated all of the available evidence, it was not "reasonable to conclude" that the duty to cooperate had been satisfied then she was entitled to reach the conclusion which she did. Further, in applying the statutory tests at paragraph 26 of the Framework, the Inspector needed to examine whether the claimant had taken reasonable steps to explore meeting its unmet housing need. In doing so the Inspector was not effectively adopting the

approach of asking what a hypothetical authority would have done but was rather discharging the statutory tests on the facts of this particular case. The undoubted existence of the margin of appreciation should not stand in the way or act as a disincentive to local planning authorities working together to help to solve difficult and controversial problems of, for instance, unmet housing needs where the authority areas are the subject of environmental constraints.

43. Turning to Ground 2, Ms Sheikh contends that in reaching her conclusions the Inspector failed to correctly interpret and apply the duty to cooperate and conflated it with the statutory requirement that the plan should be sound. Central to her submission is that the Inspector misdirected herself by working backwards from evidence which might go to the soundness of the plan to reach conclusions on whether or not the duty to cooperate had been discharged. She worked backwards from the existence of unmet need to reach a conclusion that there had been a failure to comply with the duty to cooperate. This confused and conflated the two issues of the duty to cooperate and soundness. The evidence of this error exists, for instance, in paragraphs 17 and 24 of the Inspector's report in which she focusses on the existence of unmet need and the failure to resolve that issue. Ms Sheikh submits that the reality was that at the stage that unmet need was clearly identified it was well known that it could not realistically be met elsewhere. In effect, the Inspector erroneously considered the duty to cooperate in the light of the unmet housing need, rather than examining the requirements of the duty to cooperate itself in order to understand whether it had been discharged. The issue of unmet need and whether the housing figures and delivery proposed by the SDLP were justified was an issue connected with soundness and not the duty to cooperate.
44. In response to these submissions Mr Moules contends, firstly, that the Inspector was careful to distinguish between the duty to cooperate and the requirements of soundness in the substance of her report. Secondly, Mr Moules submits that when the Inspector's decision is properly understood, it correctly distinguished between the duty to cooperate and soundness. The problem, as identified by the Inspector, did not lie in the existence of unmet housing need in and of itself but rather in the claimant's failure to engage with adjoining authorities constructively, actively and on an ongoing basis in order to consider an attempt to find a solution that that unmet housing need at the time when it emerged. The Inspector recognised, in particular in paragraph 39 of her report, that it may not be possible for the claimant's housing need to be met in full, but concluded that earlier and fuller proactive engagement might have made it "significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need". In truth, Mr Moules contends that the claimant highlights two paragraphs (paragraphs 17 and 24) which in fact exemplify the Inspector addressing and setting out the essence of the claimant's failure to engage in ongoing active and constructive engagement with the neighbouring authorities in relation to the strategic issue of unmet housing need, rather than confusing the questions arising under the duty to cooperate with those which arose in respect of soundness.
45. Turning to Ground 3, Ms Sheikh on behalf of the claimant submits that the Inspector failed to have regard to the available material evidence furnished by the claimant. The evidence demonstrated that the claimant was both aware that there would be an unmet need, but also as a result of its duty to cooperate discussions with adjoining authorities was aware that regardless of the scope of the unmet need neighbouring authorities would not be able to assist. This point is not grappled with, she submits, by the

Inspector, and, in particular, the Inspector fails to grapple with the extensive environmental constraints that each of the authorities have to work with. In addition, Ms Sheikh submits that the statements of common ground ought not to have been disregarded in the way the Inspector did by treating them as too late to influence the SDLP. In fact, that documentation reflected years of discussions between the authorities and was highly relevant to demonstrate that the duty to cooperate had been discharged. Further, the lack of a formal request for assistance from the claimant did not demonstrate non-compliance with the duty to cooperate: the reason that no formal request was made was because as a result of the exercise of the duty to cooperate the claimant was well aware that unmet need could not be met elsewhere.

46. In response to these submissions Mr Moules submits that, firstly, the Inspector addressed whether or not there had been discussion of meeting unmet need for a considerable time and concluded on the evidence, as she was entitled to, that there was no evidence to support the claimant's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities (see paragraph 35). Secondly, Mr Moules submits that the Inspector was clearly aware of the constraints under which both the claimant and the adjoining authorities operated: these were referred to at several points during the course of her report. Thirdly, the Inspector explained clearly her conclusion that the claimant had neither demonstrated that it had constructively and actively pursued solutions to the unmet housing need it had identified with its neighbours at the appropriate time during preparation of the plan, nor that cooperation with its neighbours was an impossibility in respect of meeting any of the unmet housing need arising. Fourthly, Mr Moules submits that, again, the Inspector clearly explained for good reason that the statements of common ground had arrived too late in the process to support the conclusion that the duty to cooperate had been complied with. Fifthly, the claimant's complaint in relation to the Inspector's view on the lack of the formal request to neighbouring authorities is submitted by Mr Moules to be simply another disagreement on behalf of the claimant with the Inspector's planning judgment that it was unreasonable for the claimant to do nothing by way of meaningful exploration of solutions to meet the identified housing need shortfall.
47. Finally, by way of Ground 4, Ms Sheikh submits that the Inspector failed to give adequate reasons for the claimant's failure to comply with the duty to cooperate or, alternatively, the Inspector's conclusion was irrational. In particular it is submitted that the Inspector failed to provide adequate reasons as to why weight was placed upon the claimant's failure to make a formal request for assistance earlier and further failed to adequately reason why she disregarded the evidence of neighbouring authorities in relation to the duty to cooperate, or why she suggested that the statements of common ground did not provide evidence of compliance to cooperate. In the light of the evidence the Inspector's conclusions were irrational.
48. In response to these submissions Mr Moules submits that the Inspector's conclusions on each of the issues relied upon were clear and entirely rational. As the Inspector explained, had formal requests for the adjoining authorities been made as soon as the full extent of the claimant's unmet housing need became apparent then it may have been possible through constructive engagement to achieve a more positive outcome and maximise the effectiveness of the plan (see paragraphs 37-39 of the Inspector's report). The Inspector's reasoning showed that the neighbouring authorities' views were taken

into account, but as the Inspector explains they could not allay the concerns that she had clearly identified. The statements of common ground were, for the reasons the Inspector gave, provided too late to furnish evidence of compliance with the duty to cooperate in relation to the unmet housing need identified. Finally, Mr Moules submits that it is unarguable that the Inspector's conclusion was irrational.

49. In forming conclusions in relation to these competing submissions it is necessary, in my view, firstly to analyse the substance of the legal issues which arise in relation to the duty to cooperate under section 33A of the 2004 Act. Thereafter, secondly, it is important in my view to be clear as to the nature of the decision which the Inspector reached and the specific basis for her conclusions.
50. As described in paragraph 33A(2)(a) the duty to cooperate, when it arises, requires the person who is under the duty "to engage constructively, actively and on an ongoing basis" in relation to the preparation of a development plan document (see paragraph 33(A)(3)(a)) "so far as relating to a strategic matter" (see paragraph 33A(3)(e)) to "maximise the effectiveness" of the activity of plan preparation. Whilst during the course of her submissions Ms Sheikh points out that activities were undertaken by the claimant in relation to a broad range of strategic issues concerned with infrastructure and wider environmental designations, and she relied upon the numerous strategic matters with which the claimants were concerned in preparing the SDLP, it is in my view clear that the duty to cooperate arises in relation to each and every strategic matter individually. There was, therefore, no error involved by the Inspector in the present case focussing upon one of those strategic matters in reaching her conclusions in respect of the duty to cooperate.
51. I accept the submission made by Ms Sheikh that discharging the duty to cooperate is not contingent upon securing a particular substantive outcome from the cooperation. That was a proposition which was not disputed by Mr Moules. I accept, however, his submission that the duty to cooperate is not simply a duty to have a dialogue or discussion. In order to be satisfied it requires the statutory qualities set out in section 33A(2)(a) to be demonstrated by the activities comprising the cooperation. As Sales J observed in paragraph 110 of *Zurich Assurance*, deciding what ought to be done to meet the qualities required by section 33a(1)(c)(2)(a) "requires evaluative judgments to be made by the person subject to the duty regarding the planning issues and use of limited resources available to them." As Sales J also observed, bearing in mind the nature of the decisions being taken a court reviewing the decision of an Inspector making a judgment in respect of whether there has been compliance with the duty will be limited to examining whether or not the Inspector reached a rational decision, and will afford the decision of the Inspector a substantial margin of appreciation or discretion. It is against the background of these principles that the submissions of the claimant fall to be evaluated.
52. The second issue is, as set out above, to be clear as to the nature of the decision which the Inspector reached. In that connection, in my judgment the submissions made by Mr Moules in relation to Ground 4 are plainly to be preferred. Having carefully examined the Inspector's conclusions they were, in my judgment, clearly expressed and set out in detail the reasons for the conclusions that she reached. I am unable to identify any defect in the reasoning of her report which sets out clearly and in full detail her conclusions and the reasons for them.

53. It is clear from the report that the conclusions of the Inspector were that the claimant became aware of the detailed extent of its unmet housing need after the Regulation 18 consultation which ceased on the 10 September 2018 (see paragraph 27 and paragraph 35). The first minutes of a duty to cooperate meeting referring to addressing unmet housing need in the claimant's area was on 13 March 2019, after the Regulation 19 consultation on the SDLP, and seven weeks prior to submission of the SDLP for examination (see paragraph 23). The minutes of the duty to cooperate meetings provided "no substantial evidence that the council sought assistance from its neighbours in meeting its unmet housing need" prior to the publication of the Regulation 19 version of the SDLP (see paragraph 24). The claimant did not request assistance from Tunbridge and Malling Borough Council during the course of Regulation 19 consultation on the Tonbridge and Malling Local Plan between 1 October and 19 November 2018 to assist with unmet housing need in the claimant's area (see paragraph 27), and only made formal request to ask whether or not Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council would assist in meeting the claimant's unmet housing need after the Regulation 19 consultation had been completed and just prior to submitting the plan for examination (see paragraphs 27 and 28). The statements of common ground were completed after the submission of the plan for examination and prepared too late to influence the content of the plans preparation (see paragraphs 32 and 33). Whilst the claimant contended that discussions had already indicated prior to the extent of unmet housing need emerging following the Regulation 18 consultation and further engagement was not undertaken because it had already been indicated that an unmet need of 600 dwellings could not be accommodated, the Inspector concluded that there was no evidence to support the assertion that discussions had already indicated an unmet need of 600 dwellings could not be accommodated (see paragraph 35).
54. Thus, the Inspector concluded in paragraph 37 of her report that it was reasonable to expect that the claimant would, after the extent of the unmet housing need emerging following the Regulation 18 consultation, have undertaken constructive engagement in an attempt to resolve the issue prior to the publication of the Regulation 19 version of the plan. Whilst that process may or may not have been fruitful, the Inspector observed that "it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place". The peer review process did not assist: the PAS workshop was undertaken at a very late stage the plan process and "if the engagement had occurred as soon as the council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome" (see paragraph 43). The visiting Inspector raised issues which were not adequately resolved before the plan was submitted (see paragraph 44).
55. From this distillation of the Inspector's conclusions and reasoning it is clear to see that there is no substance in the claimant's grounds. In my view it perhaps makes most sense to start with the claimant's Ground 2, the contention that the Inspector failed to properly interpret and apply the duty to cooperate and conflated it with the requirement for soundness. In my view there is no basis for this contention when the Inspector's conclusions and reasons are properly understood. Firstly, as to the application of the test it is clear from paragraph 37 that the Inspector directed herself to whether, in accordance with the requirements of section 20(7)(a)(ii), it was reasonable for her to conclude that the duty to cooperate had been complied with. She found that once the

extent of the unmet need emerged after completion of the Regulation 18 consultation on the SDLP, the claimant should have contacted its neighbouring authorities and engaged constructively in an attempt to resolve the issues arising from its unmet housing needs. Her conclusion that there was no communication, let alone engagement, in between the emergence of this issue and embarking upon a Regulation 19 consultation underpinned her conclusion that there had not been constructive, active and ongoing engagement in relation to that issue. It is clear from paragraphs 37 and 43, and indeed from the totality of her reasoning, that what she was scrutinising and assessing was not the identification of a particular solution for the strategic issue of unmet housing need, but rather the quality of the manner in which it had been addressed. Her conclusions were, based on her factual findings as to what in fact happened after the Regulation 18 consultation disclosed the extent of the unmet housing need, that no constructive and active engagement was undertaken at the time when it was required in advance of the Regulation 19 version of the SDLP being settled. These conclusions properly reflected the statutory requirements and the evidence which was before the Inspector and do not disclose any misdirection on her part, or confusion between the requirements of the duty to cooperate and the requirements of the soundness with respect to this strategic issue.

56. Turning to Ground 1 there is force in the submission made by Mr Moules that, in truth, this is a clear-cut case based on the findings that the Inspector reached. As set out above, the Inspector concluded (as she was entitled to on the evidence before her) that at the time when the strategic issue in relation to unmet housing need crystallised, there was no constructive, active or ongoing engagement and, indeed, the matter was not raised with neighbouring authorities until after the Regulation 19 consultation on the SDLP and at a very late stage in plan preparation. Requests made of neighbouring authorities on the 11 April 2019 post-dated the Regulation 19 consultation and were shortly prior to the plan being submitted. In those circumstances the Inspector was entitled to conclude that these discussions were not taking place at a time when they could properly inform and influence plan preparation and maximise the effectiveness of that activity. As the Inspector recorded in paragraph 37, she found, as she was entitled to, that had engagement occurred after the Regulation 18 consultation and prior to the Regulation 19 consultation “it might have resulted in a more positive outcome”. Further, as the Inspector recorded, the possibility that it may have led to the same outcome was nothing to the point. Effective, constructive and active engagement had not taken place at the time when it was required. By the time there was communication in respect of the issue it was too late.
57. Although the claimant stressed its belief that whenever called upon to do so neighbouring authorities would have refused to provide assistance, I am not satisfied that this provides any basis for concluding that the Inspector’s conclusions were irrational. Indeed, as she notes, Tunbridge Wells Borough Council noted in its written material that if the request to address the claimant’s unmet housing need had been made at any point prior to the submission of its comments on the Regulation 19 version of the plan then their response would have addressed the issue more fully. There was, therefore, evidence before the Inspector to support her judgment in this respect. In the light of these matters I am unable to accept that there is any substance in the claimant’s Ground 1. There is no justification for the suggestion that the Inspector failed to afford a margin of appreciation to the claimant in reaching her conclusions; the clear-cut nature of the conclusions which the Inspector reached were fully set out and ultimately

the Inspector was required by section 20 of the 2004 Act to reach conclusions in relation to the statutory test which she did.

58. Turning to the submissions in relation to Ground 3, I am unable to accept that the Inspector failed to have regard to the material which was available to her in reaching her conclusions. It is clear to me from the detail of the report that the Inspector had regard to all of the evidence that had been placed before her. The Inspector clearly addressed the detailed material in relation to the duty to cooperate meetings and the preparation of joint evidence. She also engaged with the existence of statements of common ground and the views of the neighbouring local authorities. She gave careful consideration to the peer review which had been undertaken and reflected on the responses from adjoining authorities to request they meet unmet housing need from the claimant and the environmental constraints under which the claimant had to operate. In my view the submissions advanced in respect of Ground 3 effectively amount to a disagreement with the Inspector on the conclusions which she ought to have forged based upon the material which was before her. Ultimately, the availability of this evidence did not dissuade the Inspector from reaching the conclusions which she did in respect of quality and timing of the engagement in the present case: the generality of the position presented by the claimant does not gainsay the detailed conclusions reached by the Inspector as to the nature of the duty to cooperate activities, or lack of them, at the critical point of time when the extent of nature of the unmet housing need emerged at the conclusion of the Regulation 18 consultation. In my view it is clear that the Inspector had careful regard to all of the material which was placed before her and reached conclusions which, I have already set out in respect of my views on Grounds 1 and 2, were lawful and appropriate.
59. I have already expressed my view as to the quality and nature of the reasons provided by the Inspector in respect of the examination. In my view her reasons were clear, full, detailed and justified. In addition, under Ground 4 it is contended that the conclusion which she reached was irrational. In my judgment there is no substance whatever in that contention. For the reasons which I have already given the Inspector's conclusions were clearly open to her and based upon a proper appreciation and application of the relevant statutory tests.
60. It follows that for all of the reasons set out above I am satisfied that there is no substance in any of the grounds upon which this claim is advanced and the claimant's case must be dismissed.



## Appeal Decision

Inquiry held on 9-12 December 2014

Site visit made on 12 December 2014

**by John Felgate BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 20 January 2015**

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**Appeal Ref: APP/A1720/A/14/2220031**

**Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Village Green PLC against the decision of Fareham Borough Council.
  - The application Ref P/13/1121/OA, dated 20 December 2013, was refused by notice dated 11 March 2014.
  - The development proposed is "*erection of 37 dwellings together with associated access and parking for existing play area*".
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### DECISION

1. The appeal is allowed and planning permission is granted for the erection of 37 dwellings together with associated access, and parking for the existing play area, on land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick, Hampshire, in accordance with the terms of the application, Ref P/13/1121/OA, dated 20 December 2013, subject to the conditions set out in the attached schedule.

### PRELIMINARY MATTERS

2. The planning application seeks outline permission with all matters reserved except for access, which is proposed to be from Swanwick Lane, adjacent to the existing play area. The application is accompanied by an 'Indicative Layout' (Plan No PP1220-101-00, Revision P2), but in relation to all matters other than access, that plan is purely illustrative.
3. The Council's decision notice listed four refusal reasons (RRs). RR2 related to affordable housing and ecological mitigation. Since then however, the appellants have entered into a legal undertaking which provides for ecological mitigation by way of a financial contribution. And with regard to the affordable housing, the Council now accepts that this could be secured by condition. RR2 was therefore not pursued at the inquiry.
4. RR3 related to noise. Subsequently, the appellants have submitted a noise survey report. In the light of this report, it is now agreed that any issues relating to this matter could also be deal with by condition.
5. RR4 contained a list of the submitted plans. The Council now accepts that since this did not in fact state any reasons for objection, it should not have

appeared as an RR. The only one of the original refusal reasons that remains at issue between the parties is therefore RR1.

6. As well as dealing with ecological mitigation, the legal undertaking provides for the implementation of a landscaping scheme and a woodland management plan, and the setting up of a management company with responsibility for the upkeep and maintenance of the landscape and woodland areas within the proposed development.

## **PLANNING POLICY BACKGROUND**

### **The development plan**

#### *The Fareham Borough Local Plan (the FBLP), adopted March 2000*

7. The FBLP was designed to accord with the former Hampshire Structure Plan Review. Its intended plan period was 1999-2006. In 2007, a large number of the FBLP's policies were saved by a direction from the Secretary of State. The majority of those have since been replaced by the 2011 Core Strategy, but some have continuing effect.
8. Saved Policy DG4, which applies throughout the District, states that development will be permitted, provided that various requirements are met. These include that proposals should not detract from the natural landform, and should respect inward and outward views.
9. On the proposals map, the appeal site is included in an area designated as countryside.

#### *The Fareham Core Strategy (FCS), adopted August 2011*

10. The FCS has a plan period of 2006-26. It was intended to conform with the regional strategy contained in the South-East Plan (the SEP), approved in May 2009. It was also prepared in the context of the then-emerging South Hampshire Strategy (the SHS), a non-statutory sub-regional plan by the Partnership for Urban South Hampshire (PUSH), a consortium of 11 local authorities<sup>1</sup>.
11. Policy CS6 sets out the development strategy, which is to focus new development in various specified locations. One of these is the Western Wards, which includes Lower Swanwick. Priority is to be given to the re-use of previously developed land within defined settlement boundaries<sup>2</sup>. Policy CS9 sets out further criteria for development in the Western Wards, which include protecting the setting of the existing settlements.
12. Outside defined settlement boundaries, Policy CS14 states that development will be strictly controlled, to protect the landscape character, appearance and function of the countryside and coastline. In coastal locations, the policy seeks to protect the special character of the coast, when viewed from land or water.
13. Policy CS17 seeks to encourage good design which responds positively to the key characteristics of the area, including its landscape.

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<sup>1</sup> The SHS later became informally adopted by the partnership authorities in October 2012

<sup>2</sup> The FCS does not include any new proposals map of its own. The plan is accompanied by an 'interactive proposals map', but this is stated not to form part of the adopted plan itself. In the absence of any other indication, it appears that references in the FCS to 'defined settlement boundaries' relate to the boundaries shown on the proposals map of the FBLP. This interpretation is not disputed in the present appeal.

## **Emerging plans**

*The draft Development Sites and Policies DPD (the DSP), submitted June 2014*

14. The DSP is intended to provide for the development requirements identified in the FCS up to 2026, and also the increased levels of housing and employment proposed over the same period in the SHS. The DSP covers the whole of the District except for the proposed new community of Welborne.
15. On the DSP's proposals map, the appeal site forms part of an 'area outside of defined settlement boundaries'. In such areas, draft Policy DSP7 proposes a presumption against new residential development.
16. At the time of writing this decision, the draft DSP has completed the hearing stage of its public examination, and is awaiting the Inspector's report. Until then, the plan remains subject to unresolved objections in respect of the policies and designations relevant to the present appeal. As such, it carries limited weight.

*The draft Welborne Plan (the WP), submitted June 2014)*

17. The draft WP is an area action plan which sets out policies and proposals for the development of the new settlement, over a period running to 2036. At present, the WP has reached the same stage as the DSP, and is awaiting the Inspector's report. In so far as the WP is relevant to the present appeal, it is subject to unresolved objections, and thus its weight is limited.

## **National policy and guidance**

*The National Planning Policy Framework (the NPPF)*

18. The NPPF states at paragraph 6 that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 9 states that sustainable development involves seeking positive improvements in the quality of the environment and in people's quality of life; amongst other things, this includes widening the choice of high quality homes. Paragraph 14 states that there is a presumption in favour of sustainable development.
19. Paragraph 17 sets out core planning principles. These include proactively driving and supporting sustainable economic development to deliver the homes and other development that the country needs. Every effort should be made objectively to identify and then meet those needs, and to respond positively to opportunities for growth. The core principles also include recognising the intrinsic character and beauty of the countryside, conserving and enhancing the natural environment, and focusing development in sustainable locations.
20. At paragraph 47, the NPPF seeks to boost the supply of housing significantly. Local plans should aim to meet the full, objectively assessed need for market and affordable housing, as far as is consistent with other NPPF policies. Paragraph 49 states that policies for the supply of housing should not be considered up to date if a 5-year supply of deliverable housing sites cannot be demonstrated.
21. Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes. Paragraph 114 seeks to maintain the character of the undeveloped coast and its distinctive landscapes.

22. Paragraphs 186 and 187 requires that all planning decisions should be approached positively, by looking for solutions rather than problems, and that applications for sustainable development should be approved where possible.

*Planning Practice Guidance (PPG)*

23. The PPG provides further guidance on the policies in the NPPF. Paragraph 8-001 makes it clear that the NPPF's aims for the natural environment are not limited only to areas that are formally designated. Sections 2a and 3 contain more detailed advice on assessing housing needs and land availability, to which I will refer further below.

**MAIN ISSUES**

24. In the light of the matters set out above, and all of the submissions before me, both oral and written, it seems to me that the main issues in the appeal are:
- Whether it can be demonstrated that the District has a 5-year supply of land for housing development, to satisfy the requirements of the NPPF;
  - And the proposed development's effects on the character and appearance of the area.

**REASONS FOR DECISION**

**Housing land supply**

25. The Council claims a housing land supply of over 13 years. The appellants contend that the true figure is only just over 3 years. The divergence results firstly from a fundamental difference as to the size of the requirement that is to be met, and also from various other smaller, but significant differences in both methodology and assumptions. I will deal with each of these differences below.
26. The Council's land supply calculations are based on meeting the requirements in FCS Policy CS2, plus a small uplift reflecting the additional requirements suggested in the 2012 SHS. The appellants accept that on this basis a 5-year supply can be demonstrated, but they contend that the FCS/SHS figures are the wrong basis for the calculation.
27. The appellants' own calculations are based on the housing need projections in the Strategic Housing Market Assessment (SHMA) report for South Hampshire, published in January 2014. The Council, whilst disputing the use of the SHMA figures over the FCS, maintains that a 5-year supply can be demonstrated on this basis too.

*The Council's preferred housing requirement - based on FCS Policy CS2*

28. The PPG advises that the starting point for assessing the 5-year land supply should be the housing requirement figure in an up-to-date adopted local plan, and that considerable weight should be given to such a figure (paragraph 3-030). In the case of Fareham, the FCS is an adopted plan, and is only a little over 3 years old since its adoption. In such circumstances, it might often be unnecessary to look any further.
29. However, the PPG goes on to make it clear that this is not always the case:

*"(Considerable weight should be given to the housing requirement figures in adopted local plans) ...unless significant new evidence comes to light. It should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs.*

*Where evidence in local plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered."*<sup>3</sup>

30. In the present case, the FCS's housing requirement was directly derived from the now-revoked SEP. That plan was itself based upon an earlier version of the SHS, approved by the member authorities as long ago as 2005, which in turn was based on evidence necessarily dating back to before that time. Having regard to the PPG advice therefore, it seems to me that the FCS appears to be an example of the kind of local plan that is envisaged as being potentially out-of-date: that is, one where the evidence base dates from long ago, and where circumstances have changed so that the plan may not now adequately reflect current needs.
31. Furthermore, the FCS pre-dates the NPPF. As already noted, the NPPF places emphasis on ensuring that local plans set out to meet the full objectively assessed need (OAN) for housing, as far as is consistent with other relevant policies. This is a significant change compared to the previous national policy in Planning Policy Statement 3 (PPS3), which was in place at the time when the FCS was adopted. Although the relevant part of the NPPF (paragraph 47) is couched in terms that relate principally to plan-making, the Courts have determined that the same principles should be assumed to apply equally in decision-making, including development control decisions<sup>4</sup>. In the Borough of Fareham, the Council accepts that the FCS was not informed by any assessment of full OAN, and neither does it attempt to explore how far the OAN could be met. It follows that, in respect of matters relating to housing needs and targets, the policies of the FCS cannot be said to be consistent with the approach advocated in the NPPF. Paragraph 215 of the latter makes clear that in such cases, development plan policies may carry less weight relative to national policy and other considerations.
32. It is true that the Council's land supply calculations are not reliant solely on the FCS, because they also take account of the 2012 SHS, which is a more recent document, based on data that is more up to date than the FCS. But the SHS, like the FCS, is not derived from any assessment of full OAN, and does not address the question of what is the OAN, or whether it can be met. In the absence of knowing the full OAN, it seems to me that the 5-year supply exercise cannot serve its intended purpose. Consequently, merely adding an SHS element onto the Policy CS2 housing requirement does not overcome the fundamental shortcomings of the FCS itself, or those of any land supply calculations based on it.
33. I therefore conclude that the weight that can be given to the Council's calculations, based on the FCS and the SHS, is limited. This being so, it seems to me that the next step must be to look at any other available evidence of housing needs, and to assess whether, for the purposes of this appeal, this is likely to provide a better guide to OAN.

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<sup>3</sup> PPG 3-030 (emphasis added)

<sup>4</sup> Gallagher Homes Ltd and Lioncourt Homes Ltd v Solihull MBC: [2014] EWHC 1283 (Admin)

*The alternative housing requirement - based on OAN*

34. I therefore turn to the appellants' proposed alternative, of using the figures from the 2014 SHMA report. In considering the SHMA, I have taken particular account of the letter on this subject from the Minister of State for Housing and Planning, issued on 19 December 2014, after the close of the inquiry, and the appeal parties' comments on the contents of that letter.
35. In the case of the South Hampshire SHMA, there can be no doubt that the report's intention and main purpose is to quantify the OAN, for the sub-region as a whole, and for its constituent housing market areas (HMAs) and districts. This aim is made clear, both in the report's own introduction, and in the officers' report which accompanied it to the PUSH joint committee, in January 2014. The SHMA report examines in considerable detail the various alternative demographic projections, market signals, economic trends, and the needs of different groups, including the need for affordable housing. Having done so, it presents a number of housing need scenarios, reflecting a range of differing assumptions. Without question, this is a substantial body of work, and one that appears both comprehensive and thorough.
36. The SHMA report pre-dated the coming into force of the PPG. However, it was prepared in the light of the earlier draft version, and against the established background of the NPPF, and its methodology appears broadly consistent with the subsequent guidance. The SHMA has yet to be fully tested, but nonetheless, it has evidently been accepted by the PUSH authorities, including Fareham, as a basis for the forthcoming review of the SHS and subsequent local plans. Moreover, the very fact that the SHMA has been commissioned jointly, on behalf of all the South Hampshire authorities, gives it added weight.
37. Certainly, the SHMA figures have not been moderated to allow for any constraints, or to take account of any opportunities for cross-boundary co-operation. However, these are not necessary for the purposes of defining the OAN. A good deal more work will be required before the SHMA figures can be translated into proposed housing policy targets. But that does not prevent those figures from being used in a 5-year land supply calculation now, because this is exactly what the PPG advises in a situation where the adopted plan has become out of date. At the inquiry, the Council's witness agreed that the SHMA represents the best and most up-to-date evidence of OAN currently available, and I see no reason to disagree with that view.
38. For these reasons, I conclude that the 2014 South Hampshire SHMA appears to represent a respectable and credible picture of the OAN for housing in Fareham. As such, it seems more likely to present a realistic picture of housing need than the FCS. Of these two options therefore, it seems to me that the SHMA provides the more suitable basis for a 5-year land supply calculation at the present time.

*The OAN figure*

39. Although the SHMA covers a wide range of alternative scenarios, there is agreement between the Council and the appellants that, if the SHMA-based approach is used, then the most appropriate set of figures for the purposes of this appeal is that referred to as 'PROJ2 - Midpoint Headship'<sup>5</sup>. This is

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<sup>5</sup> As set out in the SHMA report at Appendix U, Table 19 (on p51 of the Appendices)

essentially a demographic-based projection of housing need linked to the ONS sub-national population figures, with an adjustment for future changes in migration, and incorporating a household formation rate mid-way between those of the 2008-based and 2011-based DCLG projections. On this basis, Fareham's OAN, over the period 2011-36, would be 395 dwellings per annum.

40. Despite this measure of agreement, some of the evidence presented at the inquiry still questions whether 395 p.a. is high enough, having regard to the level of need in the affordable housing sector, and the need to avoid restricting economic growth. Even the Council's own witness admitted that economic trends were more likely to push the OAN up from that figure rather than down, and that on any basis, the full OAN was unlikely to be less than 395 p.a. However, it is not the function of this appeal to attempt to determine the future level of housing required in Fareham. The reason for exploring these matters is simply to choose the most appropriate figure for testing the 5-year supply at this point in time. None of the evidence identifies any other specific figure within the SHMA as being preferable to 395 dwellings per annum.
41. In passing, I note the Council's point that just because 395 p.a. is the average across the whole of the SHMA's 25-year period, that does not necessarily mean that the annual rate should be constant throughout. This may be so, but again, there is no specific evidence to support any alternative phasing. In the light of all the evidence before me, I conclude that 395 dwellings p.a. is a reasonably robust basis on which to proceed.
42. On this basis therefore, 5 years' worth of the annual OAN would be 1,975 dwellings. With the addition of a 5% buffer, which is not disputed, the overall 5-year requirement becomes 2,074 units<sup>6</sup>.

*The Council's suggested adjustment for over-delivery in previous years*

43. This requirement of 2,074 exceeds the Council's claimed supply of 1,926 dwellings<sup>7</sup>. However, the Council argues that the requirement should be reduced because, during the period 2006-14, housing completions exceeded the requirement in Policy CS2 by 401 units.
44. In putting forward this argument, the Council relies on paragraph 3-036 of the PPG, which states:
- "In assessing need, consideration may be given to evidence that a Council has delivered over and above its housing needs". (3-036)*
- In the light of this advice, the Council's case is essentially that this means that the past 'overprovision' should be deducted from the requirement for the next 5-year period, in full, irrespective of whether that requirement figure is based on the FCS or the SHMA.
45. I have considered this argument carefully. However, the PPG advice relates specifically to a situation where housing delivery has exceeded the area's housing needs, rather than a policy requirement. In this case, for the reasons explained above, I have come to the view that the Borough's housing needs are now more accurately expressed in the SHMA projections than in the FCS.

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<sup>6</sup> In the parties' evidence this is shown as 2,075, due to rounding the buffer from 19.75 to 20 units for each individual year

<sup>7</sup> As amended by Mr Home in oral evidence, from the figure of 1,876 which appears in the statement of common ground

Measured against the SHMA figure of 395 units per annum, there has been no over-provision or over-delivery.

46. I appreciate that the SHMA was only published in January 2014. But it relates to a period that started from April 2011, and it is therefore logical to take account of the housing needs that have arisen over the whole of that period. I fully accept that during 2011-14, the Council could not have been expected to meet a need which it was not aware of at the time, but that is not the point here<sup>8</sup>. With the benefit of the information now available, what was previously seen as an over-delivery against the FCS requirement during those three years, can now be seen to have been in reality a slight under-delivery compared to the level of actual need.
47. For the years 2006-11, there is no assessment of OAN. Housing completions in that period exceeded the relevant policy requirement in the FCS, but that does not mean that they exceeded the need. And in any event, this period prior to 2011 is now somewhat historic. I appreciate that 2006 was the start of the FCS period, but now that the FCS is no longer the best reference point for future housing needs, it becomes questionable whether housing completions from before 2011 have any continuing relevance.
48. Furthermore, even if I were to take a different view on these matters, so that the 401 dwellings over-delivery against the FCS were to be deducted from the SHMA-based requirement as suggested, it is far from clear why the whole of the 401 should be offset against the needs of just the next 5 years. I appreciate that this would mirror the 'Sedgefield method', but that approach is normally used where the past performance has been one of under-provision, and in that kind of situation there is consequently a clear imperative to achieve a rapid increase in the rate of delivery. In the reverse situation, as here, there is no such imperative. Arguably, the effect would be a sharp reduction, which would be at odds with the NPPF's aims to maintain continuity of supply and boost overall provision. The Council has presented no cogent rationale for this approach.
49. The PPG advice referred to above allows for consideration of the effects of past over-delivery, but does not specify what action should then be taken. It may be that in some circumstances an adjustment to the requirement for future years would be justified, but here, for the reasons that I have explained, that is not the case. I can see nothing in the PPG which sanctions the approach now proposed by the Council in deducting 401 units from the requirement side of the 5-year supply calculation.
50. I therefore conclude that no adjustment should be made in respect of the past over-delivery against the FCS requirement.

*The supply side: Welborne*

51. The Council anticipates 500 completions, within the 5-year period, at the proposed new settlement of Welborne. This is supported by the planning and development programme agreed with the scheme's promoters and other relevant agencies, which indicates work starting on site in March 2016, and the first 120 dwellings being completed by March 2017. The Council acknowledges

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<sup>8</sup> As noted at the inquiry, this argument might be relevant in other circumstances, such as where the point at issue relates to whether there has been 'persistent under-delivery' for the purposes of the NPPF buffer; but the issue here is distinct from that type of assessment

that this programme is both challenging and ambitious, but regards it as achievable.

52. However, the planned scheme is for a very large development, amounting to some 6,500 dwellings overall, plus employment, retail and other land uses. In terms of the practicalities of development, the site is completely undeveloped land, and major new infrastructure works of all kinds will be needed. A connection to the M27 is required, involving a new junction and slip roads. Developer partners, to take the lead in house-building and infrastructure works, have not yet been identified. Some of the land is not yet within the control of the current promoters, and the possible need to use compulsory purchase powers has not been ruled out. Although the Council maintains that the scheme will be financially viable, it admits that viability has been identified as a significant issue, and remains under review.
53. In terms of its planning status, although the general location of the development has been identified for many years, the formal allocation and specific site boundaries remain to be confirmed in the Welborne Plan, which is still under examination. No planning permission exists, nor has an application been made. Any application is likely to be subject to an environmental assessment, for which some of the necessary survey work will be limited as to the time of year. Some parts of the site apparently have protected status under European legislation, and a mitigation strategy may need to be agreed with Natural England before an application can be considered. There is no clear evidence as to how much of this work has already been done. I have no reason to doubt that ultimately the hurdles can be overcome, but that does not mean that they can be overcome quickly.
54. I note the Council's suggestion that, if necessary, a first phase of 500 dwellings could be brought forward as a stand-alone scheme, in advance of the new motorway junction and other new facilities. But there is no proper evidence regarding the feasibility of this option, or its effects on the development programme. The Welborne Plan clearly seeks a comprehensive approach, as set out in draft Policy WEL4.
55. The NPPF's test for inclusion in the 5-year supply includes the requirement that sites should have a realistic prospect of delivering houses within that timescale. At the inquiry the appellants' witness accepted that there was a possibility of up to 50 units coming forward within the 5-year period, although no more than that. I do not disagree with that assessment. But a mere possibility is not the same as a realistic prospect.
56. There can be no doubting the amount of work that has already gone into the Welborne scheme, or the commitment of all the parties involved. However, it is equally clear that there is still a long way to go before any houses can start to be built. For a development of this scale, with no planning permission or current application, nor yet even a detailed site allocation, five years is not a long time. From the evidence presented, it seems to me that the Council's development programme for Welborne relies at each stage on the absolute minimum timescales, or less. That approach may have its merits in some other context, but for the purposes of assessing the 5-year supply, it lacks flexibility. For this purpose, it would be more realistic in my view to assume that the development is likely to come forward in a slightly longer timescale, pushing the first completions beyond the 5-year period.

57. I conclude that the Council has failed to show a realistic prospect that development at Welborne is likely to contribute to the 5-year supply. The site therefore cannot be regarded as deliverable at this stage, in terms of the NPPF requirement. This reduces the Council's claimed supply by 500, to a maximum of 1,426 units.

*The supply side: other disputed matters*

58. A number of other sites in the Council's supply, totalling 202 units, are disputed by the appellants. I appreciate that some of these do not yet have planning permission. However, the information that the Council has provided indicates that the sites are likely to come forward within the requisite period. Some are proposed allocations in the draft DSP, which remain to be considered, but I am not aware of any objections to the principle of development on any of these sites. Some of the sites have other issues to be addressed, relating to access, trees and other detailed matters, but there is no suggestion that these are likely to be insoluble. None are so large that they would require more than five years to complete. In all of these cases, there is sufficient evidence to justify treating these sites as deliverable.
59. The Council's supply figures also include a windfall allowance of 100 dwellings across the 5-year period. I accept that this may involve a risk of some overlap with sites that are counted in other categories. But on the other hand, the Council's supply does not count identified sites of less than five units, including those with permission, which total 139 units. The Council suggests that, for the purposes of this appeal, these two figures are close enough to offset each other. In the interests of avoiding unnecessary complexity, I agree.
60. I therefore make no further adjustment to the Council's supply figure in response to the disputed sites or the windfall allowance. But in any event, in the light of the conclusions that I have already reached above, these matters do not affect the final outcome of the land supply calculation.

*Conclusions on housing land supply*

61. From the above, I conclude that the 5-year requirement, based on the best evidence of the OAN, should be 2,074 dwellings. This requirement should not be adjusted to take account of over-delivery prior to April 2014. Against this, the Council's maximum claimed supply is only 1,926 dwellings. The supply must therefore be less than the minimum 5 years required by the NPPF.
62. In addition, the Council's figure over-states the supply, by including 500 units at Welborne, which should not yet be counted as deliverable within the relevant 5-year period. When these are deducted, the realistically deliverable supply becomes 1,426 units. This amounts to only around 3.4 years.
63. Although the DSP and WP are at the examination stage, there is no evidence to suggest that the adoption of those plans in the near future would significantly change the housing supply situation from that considered at this inquiry. All in all, I conclude that a 5-year supply has not been demonstrated.
64. In the light of this finding, NPPF paragraph 49 requires that any relevant policies for the supply of housing be treated as out-of-date. For the purposes of the present appeal, it is not disputed that these include Policy CS14, in so far as the latter provides for settlement boundaries, and seeks to restrict housing development anywhere outside them. Accordingly, although the appeal site is

outside the boundary of Lower Swanwick, the resulting in-principle conflict with Policy CS14 carries relatively little weight.

65. In addition, the lack of a 5-year supply also means that added weight should be given to the benefits of providing housing to meet local needs.

### **Effects on the area's character and appearance**

#### *Effects on the character and appearance of the countryside*

66. In policy terms, the countryside is defined by the FBLP proposals map. On that map, the settlement of Lower Swanwick appears separated from the River Hamble by a continuous swathe of countryside, coloured green, and the appeal site is included in that area. Based on the proposals map, the loss of the appeal site would bring the urban area closer to the river, reducing the remaining countryside at that point to little more than a narrow strip along the water's edge. However, that is an impression conveyed by a map produced for a particular purpose. As its name suggests, the proposals map is concerned with policies and the control of development in the future; it is not necessarily intended to depict what exists now, nor can it be definitive in that respect. And in any event, for the reasons explained earlier, the settlement boundaries currently carry reduced weight, due to the lack of a demonstrated housing supply. For the purposes of this appeal therefore, it seems to me that any assessment of the appeal site's contribution to the countryside cannot usefully be done simply by reference to the FBLP proposals map. Rather, such an assessment should be based on what is seen on the ground.
67. The appeal site comprises an undeveloped grass paddock, currently used for grazing horses. To that extent, it might be arguable that the site has some resemblance to open countryside. However, the site lies at the junction of Lower Swanwick's two main roads, Bridge Road (the A27) and Swanwick Lane, which is effectively the settlement's centre. On its south-eastern and north-eastern sides, the site abuts existing residential areas. Adjacent to Swanwick Lane there is also a children's play area. To the south-west and north-west, fronting the river, is an extensive area of boat yards, workshops, moorings and related development, plus The Navigator pub and its car park. The appeal site is thus surrounded on all sides by urban land uses and built development, and at no point does it abut or connect with any other undeveloped or un-urbanised land. Consequently, notwithstanding its designation as countryside, what is seen on the ground amounts to no more than a relatively small, self-contained patch of vacant land, wholly enveloped within the built-up area.
68. How the site looks in reality is therefore quite different from the impression gained from the proposals map. To a large extent, this difference is explained by the treatment of the boatyards which encircle the appeal site on two sides. On the proposals map these are included in the countryside, thus creating the apparent connection between the appeal site and the river, and thence to the more open countryside beyond. I take no issue with this approach in terms of the policies that this implies for the yards themselves. But in terms of their effect on how the appeal site is perceived, the reality is that the boatyards comprise mainly large-scale, industrial-style buildings and a large expanse of hardstanding. Visually, these appear as an integral part of Lower Swanwick's built-up area. As such, their effect is not to link the appeal site to the river and

countryside, but rather to separate it from those, and to enclose it within the settlement.

69. In addition, the Swanwick Marina site, which includes the greater part of this boatyard area, has planning permission for redevelopment, including a pavilion building of up to 3 storeys, with retail units, bar and restaurant facilities, plus new workshops and offices, and 49 dwellings. The effect of that scheme, it seems to me, can only be to reinforce the urban character of the marina/boatyards area, further consolidating the settlement pattern and the appeal site's sense of containment within the urban area.
70. Similarly, to the north of the appeal site, the settlement boundary excludes some of the residential properties at Green Lane, suggesting a connection between the appeal site and the countryside beyond. However, as I saw on my visit, Green Lane is entirely residential in character, and functionally is fully part of the settlement of Lower Swanwick. Whilst the excluded properties are relatively low-density, a number such as 'Highfield' and 'Genesta' have been extended or replaced, becoming more prominent as a result. Consequently the Green Lane residential area is a highly visible part of the backdrop to the appeal site. Again, I do not mean to question the settlement boundary itself, as far as it relates to the Green Lane area, or the policies to be applied there. But in relation to the appeal site, the presence of residential development along the full length of its north-eastern boundary contributes to the impression of a site encircled by existing development, and reinforces the site's visual containment within the settlement.
71. This impression of containment is increased yet further by the dense woodland belt that runs along the appeal site's north-western boundary, partly within the site itself and partly on adjoining land. Some of the trees in this belt result from the additional planting that was carried out a few years ago. I note the comments made at the inquiry as to the possible motive for that planting, but this has no relevance to the planning merits of the site or the proposed development. To my mind, the tree belt has an attractive, naturalistic appearance, and continues the line which is already established along the top of the river bank further to the north. Its effect is to further reinforce the site's separation from the river, and its association with the built-up area.
72. I note the contents of the 1996 Landscape Character Assessment (LCA)<sup>9</sup>. That report found that the appeal site had 'strong visual links with the river and boat-related activities on the south side of the road'. That may have been so then, and indeed might still be so. But the boat-related activities referred to must presumably have been those in and around the boatyards, and for the reasons already given, my view is that that area has more affinity with the built-up area than the countryside. In any event, I can see nothing in this comment that could be said to endorse the view that the appeal site formed part of the countryside, either then or now. Neither is there any support for that view in the 2012 LCA<sup>10</sup>; indeed that report includes the appeal site in the urban area.
73. There are mid-range and longer views of the site from the A27 river bridge, and the railway bridge, and from Lands End Road on the opposite bank. But from all of these viewpoints, the site is framed by buildings and urban land

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<sup>9</sup> Fareham Borough Landscape Assessment : Scott Wilson Resource Consultants, May 1996

<sup>10</sup> The Hamble Valley Integrated Character Assessment : Hampshire County Council, May 2012

uses on all sides. Indeed, in respect of the view from Lands End Road, the Council made the point more than once at the inquiry, that the appeal site is the only piece of green space or open land that is visible. In addition, in all of these views, the site is partially screened by the tree belt or boatyard buildings. In none of them is the appeal site a main focus or a key element of the view. No other significant public viewpoints have been identified, other than from the roads immediately adjacent to the site itself. In my opinion all of these available viewpoints merely serve to reaffirm my earlier judgement, that the site's setting and context is formed primarily by the built-up area of Lower Swanwick.

74. In these circumstances, I conclude that the appeal site, in its undeveloped state, contributes nothing of any significance to the character or appearance of the countryside. It follows from this that, whatever visual impact the development might have, that impact would not be likely to significantly affect the countryside.

*Effects on the character and appearance of Lower Swanwick - loss of openness*

75. Seen from within Lower Swanwick, the appeal site appears essentially as an open, grassed field, sloping towards the A27. There is an attractive, medium-sized native poplar tree in one corner, at the Swanwick Lane junction, and the woodland belt on the opposite boundary, but there is no suggestion that the proposed development would put these at risk. In all other respects, the site is featureless and unremarkable.
76. If the site were developed as proposed, its present openness would be lost. However, as far as I am aware, the site has never been formally identified as an important open space, or any similar designation based on its townscape value or any contribution to the character or appearance of the settlement. Bearing in mind the other planning considerations discussed above, and especially the urban nature of the location, and the unmet need for housing, in these circumstances the loss of openness on its own is not a compelling objection.
77. Development on the lower part of the site could potentially obstruct views towards the waterfront from Swanwick Lane and the play area. Although the river itself is not visible from here, its presence is signalled by the sight of the many boat masts which extend above the roofs of the boatyard buildings, and I can appreciate why that sight would be missed by residents. But that consideration alone is not overriding. The site is not in a conservation area, nor would the proposed development appear to affect any views into or out of any such areas. The view from Swanwick Lane was not identified as a consideration in the design officer's pre-application comments, or in the planning officer's report, nor in the refusal reasons. Nor was it identified in either of the relevant LCAs. There is also no evidence that this was seen as an issue in the Council's earlier decision on the Swanwick Marina scheme, which seems likely to have a greater impact on the same view. Consequently, I am not convinced that the view from Swanwick Lane is such an important planning consideration as to outweigh the other matters that I have identified.
78. And in any event, the existing views need not be lost altogether, because layout and design are reserved matters. If the Council regards the views from Swanwick Lane as a priority issue, there seems no reason why the height and disposition of the buildings could not be designed to take this into account, by

creating gaps and preserving lines of sight where necessary. The current illustrative layout does not do this, but that plan is not binding, either on the Council or a future developer. Development on the remainder of the site would have little or no impact in terms of views towards the river. Given the size of the site as a whole, and the lack of constraints in most other respects, I see no reason why an acceptable alternative scheme could not be designed which takes account of the relevant viewpoints from within Lower Swanwick.

79. I also note the other points made in support of the retention of some openness at the site's southern corner, to create a landscaped area around the road junction and the poplar tree. I agree that this could well be an attractive approach, and this might be one possible way of producing the urban design focus that the 1996 LCA saw a need for here. But there is no reason why this should be the only way. In any event, for the same reasons as above, an outline permission based on the present application would not prevent this or any other approach from being followed at the reserved matters stage.
80. And furthermore, looking at the site as a whole, it seems to me that at that stage there would be the opportunity to seek to secure a high-quality scheme which could make better use of the land than at present, and which could enhance the urban townscape at this potentially important focal point. In the present outline application there is no guarantee that this opportunity would be realised, but the outcome would be at least partly in the Council's hands.
81. For these reasons, I have come to the view that the loss of the appeal site in its undeveloped state would not have any unacceptable adverse impact on the character or appearance of Lower Swanwick, and indeed could prove beneficial.

*Effects on Lower Swanwick – the quantity of development proposed*

82. Averaged across the site, the proposed development of 37 dwellings would amount to a density of about 32 dwellings per hectare (dph). That is slightly higher than the average within the surrounding residential area, but not unduly so. Nothing in the NPPF or PPG suggests that new development should be required to match that of its surroundings as a matter of course. Rather, the emphasis is on making good use of land, encouraging innovation, and good design, whilst still respecting local character and identity.
83. If development on the lower part of the site were restricted for any of the reasons discussed above, that would tend to increase the density of the remainder of the site, to above 32 dph. At the extreme, if all of the built development were concentrated in the upper area, the density there would be around 47 dph. But that would be offset by a lower density in the lower area; it would not change the overall density of the development as a whole. The existing settlement itself contains a wide range of variation in densities, both above and below what is now proposed; including lower density at Green Lane, but higher in the Swanwick Lane terraces, the Swanwick Quay flats, and the proposed Marina development. There is nothing inherently objectionable about such differences.
84. I accept that the submitted illustrative plan has some shortcomings. I agree that it would be desirable for the development to present an active frontage to the public realm, including Swanwick Lane and the play area, and that issues such as overlooking and relationships to surrounding properties need careful

attention. But all of these are reserved matters, and there is nothing to suggest that they cannot be resolved at the appropriate stage.

85. I note that there is now no dispute that the north-western tree belt could be satisfactorily protected by the relevant provisions contained in the undertaking, together with a buffer zone which could be secured by condition.
86. Having regard for all the evidence before me, I can see no reason why an outline permission for 37 units should not be able to produce a satisfactory detailed scheme which satisfies national and local design policies.

*Other matters relating to effects on character and appearance*

87. Although the appeal site was included in the coastal zone that was identified in the FBLP, that policy has now ceased to have any effect. I note the suggestion that the 'coastline' and 'coastal locations' now referred to in Policy CS14 must be the same as that area, but this does not follow. The areas in question are not defined on any map. Whilst Lower Swanwick might be described as being just within the upper reaches of the river estuary, it is some way from what would normally be considered the coastline. In my view, the area is clearly not the kind of 'undeveloped coast' to which paragraph 114 of the NPPF refers. In any event, for the same reasons as those given above, I do not consider that the development would have any significant adverse effect on the character or appearance of the coastal area, or that of the Hamble estuary.
88. As I have already indicated, I appreciate that the site is valued by local people. However, the NPPF advice on protecting 'valued landscapes', in paragraph 109, is placed in the context of conserving and enhancing the natural environment. In the present case, in view of my conclusions on the above matters, it seems to me that the appeal site does not contribute significantly to the natural environment in any of the ways to which this paragraph is directed. I can therefore find no reasonable basis for applying paragraph 109 here.

*Conclusions regarding the effects on character and appearance*

89. I conclude that the proposed development would have no material adverse effects on the character or appearance of the countryside, or of the settlement of Lower Swanwick. As such, it would not conflict with any of the relevant policies, including FLBP Policy DG4, or FCS Policies CS9, CS14 or CS17.

**Other matters**

*Traffic and safety*

90. I note the concerns raised by local residents, particularly concerning traffic, congestion and highway safety. I saw on my visit that local roads are already busy, especially in the peak periods, and the development now proposed would add more traffic to the network. However, as a percentage of the existing flows, the increase generated by 37 dwellings would be negligible, and the proposed design of the new junction on Swanwick Lane, including the proposed 'keep clear' road markings, would meet all of the Highway Authority's safety requirements. There are therefore no reasonable highway grounds for objection.
91. In addition, the replacement of the existing layby with a new off-street car park would undoubtedly be a safer arrangement for users of the children's play area,

as it would greatly reduce the potential for a small child to wander into the path of a moving vehicle. I appreciate that this might leave some residents looking for alternative overnight parking, but it seems to me that this is outweighed by the safety benefit.

92. A suitable junction design and the early provision of the car park can be secured by conditions.

*Residential amenity*

93. I accept that the proposed development would block views of the river from some neighbouring properties, and I fully understand what this would mean to their owners. However, the loss of private views weighs less heavily as a planning consideration than the other issues that have been identified. There is no reason to doubt that existing occupiers can be adequately protected from more serious impacts such as overlooking, overshadowing or overbearing effects, at the detailed stage. The development therefore need not unacceptably harm living conditions at any existing property.

*Local facilities*

94. I note the comments made about the adequacy of some local facilities. But on my tour of the area, I saw that the site is within reasonably easy reach of schools, doctors, shops and a variety of local employment. Public transport is available by bus and train, at most times of day, and the Highway Authority states that it intends to improve pedestrian and cycle facilities on the A27.
95. I accept that there may be pressures on some local services, especially doctors and schools, but at a time when population numbers are increasing throughout the region, the same is true in many areas, and ultimately the task of adapting to meet future needs is one for the providers of those services. In the present case, this would not be a proper reason to refuse planning permission.

*Wildlife*

96. The various observations relating to wildlife are noted, but the survey evidence shows that the site has limited habitat value. This can be adequately protected and enhanced by condition.

*The legal undertaking*

97. The undertaking provides for a financial contribution of £6,364.00 towards the mitigation of off-site ecological impacts. The need for such a contribution arises because of the development's proximity to designated sites of ecological importance, and the consequent potential cumulative impacts of developments in the area on protected bird species. A framework for such contributions has been agreed between the PUSH authorities under the Solent Disturbance and Mitigation Project, and a specific programme of mitigation works has been identified, focused on the Alver Valley Country Park, in the Borough of Gosport.
98. The undertaking also provides for the setting up of a management company to maintain the development, and for the carrying out of a woodland management plan and other landscaping works, in accordance with details to be approved by the Council.

99. From the information provided, I am satisfied that all of the obligations are necessary, and are properly related to the proposed development, so as to meet the relevant policy and legal tests<sup>11</sup>.
100. I note that a Community Infrastructure Levy (CIL) charging Schedule is in place in the borough, and that the proposed development would also be required to contribute to local infrastructure provision through a CIL payment.

### **Conditions**

101. I have considered the conditions suggested by the Council, and those others discussed at the inquiry, in the light of the tests in NPPF paragraph 206. If permission is granted, I agree that most of these conditions would be needed in one form or another, although with some re-ordering and rewording, to improve their clarity, precision and effectiveness. The conditions that I consider should be imposed on any permission in this case are set out in the attached Schedule.

#### *Conditions to be imposed*

102. Conditions Nos 1 – 3 set out the requirements as to reserved matters and the time limits for submission and commencement. In the light of my earlier conclusions regarding the Borough's housing land supply, I have reduced the time limits to less than the normal statutory periods, to better reflect the urgency of the need. I note the Council's suggested additional wording, but I see no evidence to support a limit of 3 storeys; nor any need for these conditions to refer to the mix of dwelling types.
103. Condition 4 sets out the requirements with regard to affordable housing, which is needed to comply with FCS Policy CS18. I agree that the condition should specify the number of affordable units, and their tenures, but the suggested detailed breakdown as to numbers of bedrooms and floorspaces seems to me over-prescriptive at this outline stage. The suggested contingency provisions relating to right-to-buy, staircasing, mortgagee in possession, and other exceptions, seem to me too imprecise for inclusion in a condition, and I have therefore omitted these.
104. Conditions 5 and 6 set out the requirements for pre-commencement investigations relating to archaeology and contamination. These are necessary to protect the historic environment and the health of future occupiers respectively.
105. Conditions 7 and 8 are aimed at securing the implementation and on-going management of high-quality landscaping, and Nos 9 – 13 provide for the protection of existing trees and hedges. All of these are needed to ensure a good standard of development.
106. Conditions 14 – 20 set out the requirements as to highway works, both off and on-site, and Nos 21 and 22 secure the provision of the proposed play area car park. All of these are necessary in the interests of highway safety and for the convenience of road users. In Condition 22, I have increased the period from 6 to 8 weeks, to ensure that compliance can be achieved.

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<sup>11</sup> In: (i) Regulation 122 of the Community Infrastructure Levy Regulations 2010; and (ii) NPPF paragraph 204

107. Condition 23 requires adequate measures to mitigate noise from road traffic and nearby commercial uses, as defined in the submitted noise report; and Condition 24 seeks the provision of suitable facilities for household refuse. Both are needed to ensure a satisfactory residential environment.
108. Condition 25 calls for ecological mitigation and enhancement, in order to minimise any impacts on biodiversity and secure a net gain in accordance with NPPF paragraph 109. The condition requires further details to be submitted and approved, since the existing ecological report contains limited detail as to any recommended measures.
109. Condition 26 requires compliance with the Code for Sustainable Homes, in accordance with FCS Policy CS15.

#### *Rejected conditions*

110. Having carefully considered all of the other suggested conditions, I find that none of these meet the relevant tests. The Council's proposed requirement for the development to be carried out only in accordance with the submitted illustrative plan would not be reasonable, because layout is a reserved matter, and in any event there is no evidence to suggest that no other form of layout would be acceptable. Equally, the appellants' tentative suggestion of an exclusion area in the southern corner would not be a reasonable condition, since it has not been shown that there is any overriding objection to development in that part of the site.
111. The proposed conditions relating to materials, car parking and cycle storage are unnecessary, as these details can be dealt with at the reserved matters stage. Lighting is adequately covered in the revised on-site highway works condition that I have included at Condition 20, and thus does not need an additional separate condition.
112. With regard to the proposed construction method statement and controls on the hours of construction work, powers are available to prevent obstruction of the public highway, or the deposit of mud, and to prevent nuisance to adjoining occupiers, under other legislation. There are no particular circumstances here that make it necessary to duplicate those controls through planning conditions.

#### **CONCLUSIONS**

113. The proposed development of 37 dwellings would be outside the settlement boundary defined in the FBLP, and would thus conflict with FCS Policy CS14. However, given the lack of a demonstrated 5-year housing supply, the settlement boundary must be regarded as out of date, and the weight that can be afforded to Policy CS14 is reduced accordingly.
114. Despite its designation on the FBLP proposals map, the appeal site does not appear in reality as an integral part of the countryside, nor of the coast, and does not contribute significantly to the character or appearance of those areas. Neither does the site, in its undeveloped state, contribute positively to the character or setting of the settlement. Consequently, no material conflicts arise in respect of any of the policies that are concerned with protecting these areas, in either the development plan or the NPPF.

115. The site lies within the Western Wards area, which is identified in Policies CS6 and CS9 as one of the District's preferred locations for housing development. The local infrastructure and services are adequate to serve a development on the scale now proposed.
116. So, on the one hand, the development would result in the loss of an undeveloped, but otherwise unremarkable, parcel of open land. On the other hand, the proposed development would make a valuable contribution to meeting local housing needs, including affordable housing provision. There would also be a modest public benefit in the provision of the proposed car park to serve the existing play area. And in addition there would be the opportunity, at the reserved matters stage, for the Council to seek to secure a high-quality scheme, which could make better use of the land, and enhance the townscape.
117. In view of the unmet housing need, the benefit of adding 37 new dwellings to the local housing supply commands substantial weight. Together with the car park and the potential for townscape enhancement, it seems to me that the conflict with Policy CS14 and any other harm arising from the development would be significantly and demonstrably outweighed by these benefits.
118. Having regard to the three 'dimensions' of sustainable development, and all of the relevant policies contained in the NPPF, I conclude that the development now proposed would constitute the kind of sustainable development that the NPPF seeks to encourage and promote. I have taken into account all the other matters raised, but none alters this conclusion.
119. The appeal is therefore allowed.

*John Felgate*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

The planning permission to which this decision relates is granted subject to the following conditions (numbered 1 - 26):

### *Reserved matters and time limits*

- 1) No development shall be commenced until details of the appearance, landscaping, layout, and scale (hereinafter called "the *reserved matters*") of the proposed development have been submitted to the local planning authority and approved in writing. The development shall be carried out in accordance with the details thus approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
- 3) The development shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.

### *Affordable housing*

- 4) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to the local planning authority and approved in writing. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the NPPF. The scheme shall provide for 15 units of affordable housing, including 10 for 'affordable rented' tenure, and 5 for shared ownership. The affordable housing scheme shall also contain details of:
  - (i) the proposed mix of types and sizes of the affordable housing units, and their location within the site;
  - (ii) the proposed timing of the construction of the affordable units, in relation to the occupancy of the market housing;
  - (iii) the proposed arrangements for the transfer of the affordable housing to an affordable housing provider;
  - (iv) the arrangements to ensure affordability for the initial and subsequent occupiers in perpetuity; and
  - (v) the occupancy criteria and the means by which such criteria are to be enforced.

### *Archaeology*

- 5) No development shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme of investigation which has been submitted to the local planning authority and approved in writing.

### *Contamination*

- 6) No development shall take place until the site has been investigated for soil contamination, and any such contamination found to be present has been removed or rendered harmless, in accordance with a scheme to be submitted to the local planning authority and approved in writing. In addition:
  - (i) If, during the course of construction, any contamination is found which has not been identified previously, no further work shall take place until that contamination has been removed or rendered harmless, in accordance with additional measures to be submitted to and approved in writing by the local planning authority; and
  - (ii) If any contamination has been found to be present at any stage, either before or during construction, no part of the proposed development shall be brought into use until a verification report has been submitted to and approved by the local planning authority, showing that all such contamination has been treated, and the site

rendered safe for occupation, in accordance with the original contamination scheme and any further measures subsequently agreed.

*Landscaping*

- 7) The landscaping details to be approved under Condition 1 shall include details of all planting and seeding, the surfacing of all hard surfaced areas, all boundary treatments, all re-grading or re-contouring of the land, and any signage and street furniture. The landscaping works thus approved shall be implemented in accordance with the approved details, and in accordance with the timescale specified in the submitted legal undertaking.
- 8) The landscaping details to be approved under Condition 1 shall also include a landscape management plan. Following the implementation of the landscaping works, all of the landscaped areas shall be maintained thereafter in accordance with the details thus approved. Any tree or plant forming part of the approved landscaping scheme which dies, or becomes seriously damaged or diseased, or is removed for any reason, within a period of 5 years after planting, shall be replaced during the next planting season with others of similar size and species.

*Existing trees and hedgerows*

- 9) No development shall take place until a tree and hedgerow protection scheme has been submitted to the local planning authority and approved in writing. The scheme shall contain details of proposed measures for the protection and retention of all of the existing trees and hedgerows on and adjacent to the site during construction. The scheme shall also identify a suitably qualified Arboricultural Supervisor.
- 10) The measures to be approved under Condition 9 shall include protective fencing, and such fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought on to the site, and shall remain in place until the latter have been removed from the site and the development has been completed. Nothing shall be stored or placed in any area fenced in accordance with this condition, and the ground levels within these areas shall not be altered, nor shall any excavation be made, except with the written consent of the local planning authority.
- 11) No tree or hedgerow on the site shall at any time be cut down, uprooted or destroyed, nor be topped, lopped or pruned, other than in accordance with details approved within either the tree and hedgerow protection scheme (under Condition 9) or the landscape management plan (under Condition 8). Notwithstanding this requirement, in the event that any existing tree or hedgerow dies or is lost for any reason, within a period of 5 years from the date of completion of the development, replacement planting shall be carried out in accordance with details to be approved in writing by the local planning authority.
- 12) All works approved under Conditions 9 - 11 shall be carried out in accordance with BS 5837:2012, and shall be overseen by the approved Arboricultural Supervisor.
- 13) The layout details to be submitted under Condition 1 shall include provision for a 5m-wide woodland buffer zone alongside the whole length of the tree belt on the site's north-western boundary, as shown on Plan No PP1220-101-00 (Revision. P2). Within this buffer zone, the land shall be used only for communal purposes, including landscaping, open space, and roadways, and no part of the buffer zone shall be included within the curtilage of any dwelling.

*Access and off-site highway works*

- 14) The proposed new access to the site and related off-site highway works shall be laid out in accordance with the submitted details shown on Plan No. A083488\_PR\_01. These works shall include the removal of the existing layby in Swanwick Lane, the

realignment of the footway alongside it, and the provision of visibility splays of 2.4m x 65m in both directions, all as shown on this approved plan.

- 15) In addition, the following off-site works are to be carried out, in accordance with details to be submitted to the local planning authority and approved in writing:
  - (i) the making good of the redundant footway and layby areas; and
  - (ii) the permanent closure of the existing site access to the north of the play area.
- 16) No development (other than that required to comply with this condition) shall be carried out until the existing layby has been closed, and the site access has been constructed to at least binder course level, including the first 10m of the access road.
- 17) No development or works of any kind (including those specified in condition 16), shall be carried out until a timetable for the full completion of all the access and off-site highway works required under Conditions 14 - 16 has been submitted to the local planning authority and approved in writing. These works shall thereafter be carried out and completed in accordance with the timetable thus approved.
- 18) No new dwelling shall be occupied until 'keep clear' road markings have been provided in Swanwick Lane, in accordance with details to be submitted to the local planning authority and approved in writing.
- 19) Once the visibility splays referred to in Condition 14 have been created, clear visibility within the splay areas shall be maintained thereafter, above a height of 600mm from ground level.

*On-site highway works*

- 20) The details to be submitted under Condition 1 above shall include details of all necessary on-site highway infrastructure, including access roads, turning areas, footways, street lighting and highway drainage, together with a timetable for the implementation of these on-site works. No dwelling shall be occupied until the on-site highway infrastructure serving that unit has been provided, in accordance with the approved details, and the relevant roads and footways finished to at least binder course level. These on-site highway works shall thereafter be fully completed in accordance with the approved timetable.

*Play area car park*

- 21) The layout details to be submitted under Condition 1.1 above shall include details of the proposed new car park for the existing play area adjacent to the site. The car park shall provide a minimum of 6 spaces, and shall be laid out in accordance with the details thus approved.
- 22) The proposed car park to be provided under Condition 21 shall be completed and made available for public use in connection with the play area, no later than 8 weeks from the date when the existing layby is closed. Thereafter, the car park shall be retained and kept available for its stated use.

*Noise mitigation*

- 23) No construction work on any new dwelling shall be commenced until a scheme of noise mitigation, including details of the proposed glazing and ventilation systems, has been submitted to the local planning authority and approved in writing. The submitted details shall demonstrate that the new dwellings are designed not to exceed the following maximum internal noise levels:

Daytime average (all habitable rooms):	35 dB $L_{Aeq}$
Night-time average (bedrooms):	30 dB $L_{Aeq}$
Night-time maximum (bedrooms):	45 dB $L_{Amax}$

*Refuse storage*

- 24) The details to be submitted for approval under Condition 1 shall include details of the provision to be made for the storage of household refuse for each proposed dwelling. No dwelling shall be occupied until the approved provision has been made available for use by the occupiers of that dwelling. Thereafter, the approved refuse storage provisions shall be retained in accordance with the details thus approved.

*Ecological mitigation*

- 25) No development shall take place until a detailed scheme of ecological mitigation and enhancement measures has been submitted to the local planning authority and approved in writing. The scheme shall include a timetable for the implementation of the necessary works, and those works shall be carried out in accordance with the scheme and timetable thus approved.

*Code for Sustainable Homes*

- 26) The proposed dwellings shall achieve Level 4 of the Code for Sustainable Homes. No new dwelling shall be occupied until a final Code Certificate has been issued for that dwelling, certifying that Code Level 4 has been achieved.

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Ground, of Counsel      Instructed by the Solicitor to the Council

He called:

Mr Stephen Jupp, BA(Hons) LLM MRTPI	Planning consultant
Mr Peter Home, MA(Oxf) MRTPI	Adams Hendry

### FOR THE APPELLANT:

Mr Christopher Boyle, QC      Instructed by WYG Planning

He called:

Mr Stephen Brown, BSc(Hons) DipTP MRTPI	Woolf Bond Planning
Mr Duncan McInerney, BSc(Hons) MLD CMLI	The Environmental Dimension Partnership
Mr Martin Hawthorne, BSc(Hons) MRTPI	WYG Planning

### OTHER INTERESTED PERSONS:

Cllr Sean Woodward	Leader of Fareham BC and ward member for Sarisbury
Mr Jim Wood	Chairman, Burr ridge & Swanwick Residents' Association
Mr John Grover	Local resident
Mr Clive Nightingale	Local resident
Miss Sarah-Jane Moore	Local resident
Ms Suzanne Rosenbrier	Local resident (also speaking on behalf of Ms Kate Winkworth, local resident)
Mr Don Frost	Local resident

## **DOCUMENTS TABLED AT THE INQUIRY AND AFTERWARDS**

### **TABLED BY THE APPELLANTS**

- 1 Table: housing completions against requirement, 2006-14
- 2 Eastleigh Borough Local Plan examination: Inspector's preliminary report on housing needs and supply, 28 November 2014
- 3 Dartford BC v SoS and Landhold Capital Ltd: judgement dated 24 June 2014 [*2014 EWHC 2636 Admin*]
- 4 Photographs of the appeal site from the railway line
- 5 Photographs of the appeal site from Bridge Road, December 2014
- 6 Swanwick Marina – approved plan
- 7 Secretary of State's appeal decision – Droitwich Spa (APP/H1840/A/13/2199085)
- 8 Secretary of State's appeal decision – Ramsgate (APP/Z2260/A/14/2213265)
- 9 Appeal decision – Swanley (APP/G2245/A/13/2197478)
- 10 Bus timetables
- 11 Train timetables: Bursleden - Southampton
- 12 Train timetables: Bursleden - Portsmouth
- 13 Welborne strategic framework plan, annotated by Mr Hawthorne to show land not controlled by the promoters
- 14 Correspondence relating to screening direction for Welborne development
- 15 Executed unilateral undertaking, dated 9 December 2014
- 16 Appellants' suggested wording for a condition restricting development on part of the site, and related plans
- 17 Mr Boyle's closing submissions
- 17A Email dated 23 December 2014 in response to the Ministerial letter re SHMAs

### **TABLED BY THE COUNCIL**

- 18 Appeal decision – Storrington (APP/Z3825/A/13/2202943)
- 19 Appeal decision – Emsworth (APP/L3815/A/13/2198341)
- 20 Emails relating to various housing supply sites
- 21 Welborne – planning programme chart
- 22 The Solent Disturbance Mitigation Project Interim Framework – report to PUSH Joint Committee, 25 March 2014, and minutes
- 23 Mr Home's summary statement
- 24 Inspector's decision re land at Blaby (S62A/2014/0001)
- 25 Swanwick Marina – planning permission and officers' report
- 26 S Northants v SoS and Barwood Homes Ltd: judgement dated 10 March 2014 [*2014 EWHC 570 Admin*]
- 27 Mr Ground's closing submissions
- 27A Email dated 22 December 2014 relating to the Ministerial letter re SHMAs

### **TABLED BY THE OTHER PARTICIPANTS**

- 28 Cllr Woodward's statement
- 29 Mr Wood's statement
- 30 Mr Grover's statement
- 31 Mr Nightingale's statement
- 32 Miss Moore's statement
- 33 Ms Winkworth's written submission (presented by Ms Rosenbrier)
- 34 Aerial photograph dated 2013, tabled by Mr Grover

### **OTHER TABLED DOCUMENTS**

- 35 Statement of Common Ground on 5-year housing land supply
- 36 Extracts from Core Strategy 'interactive' proposals map
- 37 Proposed condition re affordable housing (tabled jointly)
- 38 Letter from the Minister of State for Housing and Planning, dated 19 December 2014, re Strategic Housing Market Assessments



## Appeal Decision

Inquiry held on 25 April 2017

Site visit made on 27 April 2017

by **S R G Baird BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 14 August 2017**

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**Appeal Ref: APP/A1720/W/16/3156344**

**Land north of Cranleigh Road and west of Wicor Primary School,  
Portchester, Fareham, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Persimmon Homes South Coast against the decision of Fareham Borough Council.
  - The application Ref P/15/0260/OA, dated 17 March 2015, was refused by notice dated 24 March 2016.
  - The development proposed is residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping.
- 

### Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping on land north of Cranleigh Road and west of Wicor Primary School, Portchester, Fareham, Hampshire in accordance with the terms of the application, Ref P/15/0260/OA, dated 17 March 2015, subject to the conditions contained at Annex A of this decision.

### Preliminary Matters

2. The application was made in outline with all matters other than means of access reserved. The appellant and the local planning authority (lpa) confirmed that the drawings that comprise the planning application are Drawing Nos. LOC 1 Rev D – Location Plan and J-D1708.00 - Site Access Layout and Highway Improvements. The application plans are supported by 2 Illustrative Plans; Drawing Nos. 01 Rev W- Illustrative Site Plan and 2498-SK-04 Rev P3 – Indicative Landscape Strategy.
  3. The appellant has submitted a signed S106 Unilateral Undertaking (UU) providing for financial contributions towards: (a) mitigation in accordance with the Interim Solent Recreation Mitigation Partnership and (b) the approval and monitoring of a Travel Plan. In addition, the UU provides for the laying out of the public open space and that 40% of the dwellings would be affordable housing units.
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4. An application for an award of costs was made by Persimmon Homes South Coast against Fareham Borough Council. This application is the subject of a separate Decision.
5. Following the close of the inquiry, the Supreme Court issued a judgement<sup>1</sup> concerning the interpretation of paragraph 49 of the National Planning Policy Framework (Framework) and its relationship with Framework paragraph 14. The parties were given an opportunity to comment on the implications of this judgement for their cases. I have taken the judgement and the parties' comments into account in coming to my decision.

### **Main Issues**

6. These are:
  - (i.) whether the lpa can demonstrate a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land supply (HLS);
  - (ii.) the effect on the supply of Best and Most Versatile (B&MV) agricultural land; and
  - (iii.) the effect on the character and appearance of the area.

### **Reasons**

7. The development plan for the area includes the Core Strategy (CS) adopted in August 2011, the Local Plan Part 2: Development Sites and Policies adopted in June 2015 (LP2) and the Local Plan Part 3: The Welbourne Plan adopted in June 2015 (LP3). The lpa has commenced a Local Plan Review (LPR). It is anticipated that a draft Local Plan will be published for consultation in September 2017.

#### Issue 1 - Housing Land Supply

8. Framework paragraph 47 seeks to boost significantly the supply of housing. Lpas are enjoined to ensure that Local Plans meet the full, objectively assessed needs (OAN) for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. Lpas are to identify and update annually a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land against their housing requirements with an additional buffer of 5% or 20% where there has been a record of persistent under delivery of housing.
9. Here, the lpa's 5-year HLS calculation is based on the requirements of the CS, in particular Policy CS2, adopted in 2011. The CS has a plan period running from 2006 to 2026 and was produced in the context of the no longer extant regional strategy (The South-East Plan) and the then emerging South Hampshire Strategy (SHS), a non-statutory sub-regional plan produced by a consortium of several lpas.
10. Given the CS was adopted several months before the publication of the Framework and the CS housing requirement is largely based on the regional

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<sup>1</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).

strategy it is not a Framework compliant OAN. Although LPs 2 and 3 post-date the Framework, neither plan undertakes the identification of an OAN.

11. Given the above, and in light of the Navigator appeal decision<sup>2</sup>, the appellant submits that the starting point for calculating the HLS position should be based on the April 2016 Objectively Assessed Housing Need Update produced for the PUSH<sup>3</sup> authorities and the June 2016 PUSH Spatial Position Update. Both studies identify an OAN for Fareham that is materially higher than the CS housing requirement. The Ipa's position is that as LPs 2 and 3 have been found sound, and in light of PPG and Ministerial guidance on the use of SHMAs the housing requirement used to calculate the HLS is that contained in the CS. The Ipa's position is that until the LPR has been the subject of consultation, examination and adoption it is premature to use the PUSH OAN as the Borough's housing requirement.
12. PPG<sup>4</sup> advises that housing requirement figures in an up-to-date, adopted LP should be used as the starting point for calculating the 5-year HLS. PPG advises that considerable weight should be attached to the housing requirement figures in adopted LPs, which have successfully passed through the examination process, unless significant new evidence comes to light. However, PPG notes that evidence that dates back several years, such as that drawn from revoked regional strategies may not adequately reflect current needs. Thus, where evidence in a LP has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs i.e. SHMAs should be considered. That said the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints.
13. In December 2014, in a Ministerial letter, the Government clarified the policy position on emerging evidence in the form of SHMAs. The letter notes that the publication of a locally agreed assessment provides important new evidence and where appropriate will promote a revision of housing requirements in LPs. Lpas are expected to actively consider the new evidence over time and, where over a reasonable period they do not, Inspectors could reasonably question the approach to HLS. The Minister goes on to note that the outcome of a SHMA is untested and should not automatically be seen as a proxy for a final housing requirement in LPs or that it does not immediately or, in itself, invalidate housing numbers in an existing LP.
14. Here, the CS housing requirement is largely based on the no longer extant South East Plan, whose evidence base dates back to at least 2000. It is accepted that the CS does not contain a Framework compliant assessment of OAN and neither LPs 2 or 3 purport to set a housing requirement based on an OAN. The 2014 Ministerial guidance, in my view, restates the advice contained in the PPG and does not, in itself, preclude using up-to date SHMA information to assess the 5-year HLS.
15. The latest assessment of the "Policy-Off" OAN is contained in the April and June 2016 PUSH reports. These documents, as the introduction to the April

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<sup>2</sup> APP/A1720/A/14/2220031.

<sup>3</sup> Partnership for Urban South Hampshire.

<sup>4</sup> Paragraph 030 Ref ID: 3-030-20140306.

2016 report says, provide an analysis of housing need, which for Fareham is 420 dpa and 450 dpa respectively. These are substantial bodies of work that have been carried out in accordance with PPG guidance and at least one lpa has adopted the PUSH OAN calculated for its area as the basis for calculating the 5-year HLS. Here, the lpa acknowledges that the PUSH April 2016 OAN is the best evidence on the OAN for Fareham. I have taken careful note of the Minister's reference to lpa's considering the evidence over time and the reference to a reasonable period. Whilst the 2 reports are relatively recent, the lpa was aware during the Navigator appeal in December 2014 that the OAN identified in the 2014 South Hampshire SHMA was materially higher than the CS requirement. The decision in the Navigator appeal, which was not challenged, was predicated on an acceptance that the 2014 OAN provided a more suitable basis for a 5-year HLS calculation. In my experience it is rare in the extreme to conclude that the "Policy-Off" OAN is likely to reduce and it is clear from the April and June PUSH OAN reports that it continues to rise materially.

16. In line with PPG advice, it is, in my view, reasonable to conclude that the CS/LP 2 housing requirement is materially out-of-date and is derived on a basis that is inconsistent with the Framework. Thus, having regard to the case law<sup>5</sup> referred to, PPG and Framework policy, I consider that the 5-year HLS supply should be assessed on the basis of the PUSH April 2016 OAN.
17. Before dealing with the assessment of the 5-year HLS position, it is appropriate to deal with the matter of whether a 5 or 20% buffer should be added to the housing requirement. The lpa add a buffer to the housing requirement set out in the CS and LP 2, but not to the contribution to be made by the major urban extension at Welbourne (LP 3). The exclusion of Welbourne is predicated on the basis that it is a site specific allocation implementing a large-scale development proposal in the CS. I am not aware that there is support for such an approach either in the Framework or PPG and read on its face the Framework suggests that the buffer should be applied to the requirement as a whole. Accordingly, I consider the buffer figure should be applied to the requirement as a whole.
18. PPG<sup>6</sup> advises that the approach to identifying a record of persistent under delivery inevitably involves questions of judgement in order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing. The guidance indicates that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle. Here, I have details of net completions for the years 2006/07 to 2015/16 and these figures are not disputed by the lpa. For the period 2006/07 to 2010/11 the CS Policy CS2 requirement is applied and from then until 2015/16 the appellant applies the OAN figure taken from the PUSH April 2016 assessment of OAN. This is on the basis that the PUSH OAN figure is calculated from 2011. On this basis, completions only exceed the housing requirement in 2 out of the last 10 years. However, in the period up until 2014 when the then PUSH SHMA identified an OAN of 395 dpa the lpa could not have been expected to meet a

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<sup>5</sup> City and District of St Albans and The Queen (on the application of) Hunston Properties Limited Secretary of State for Communities and Local Government and anr [2103] EWCA Civ 1610 & Gallagher Homes Limited Lioncourt Homes Limited and Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin).

<sup>6</sup> Paragraph 035 Ref ID: 3-035-20140306.

need that it was not aware of. On this basis, allowing for peaks and troughs in the housing market it appears to me that there has been significant under-delivery in only 3 out of the last 10 years. On this basis, the application of a 20% buffer is not, in my view, justified.

19. Turning now to the 5-year HLS, I have considered 2 scenarios. One based on the requirements of CS Policy CS2, the lpa's preferred scenario, and one based on the up-to-date OAN figure. On the CS based approach, the 5-year housing land requirement is some 1,932 dwellings and the lpa claim a deliverable supply of some 2,003 dwellings, a surplus of some 71 units giving a 5.18-years' supply of housing land<sup>7</sup>. However, taking into account my conclusion on the appropriateness of excluding Welbourne from the buffer figure including it within the 5% allowance on the whole of the requirement would still return a HLS marginally above 5-years. The surplus would be reduced to some 13 units; a figure the lpa does not dispute.
20. The appellant disputes the deliverability of 9 of the LP 2 allocations, the deliverability of the brownfield site at Warsash Maritime Academy and the ability of the Welbourne allocation to deliver some 425 dwellings in years 4 and 5 of the HLS calculation. Using the lpa's CS housing requirement figure, the appellant's calculation gives a shortfall of some 1,965 units and estimates a 3.28-years' supply of housing land.
21. In coming to my conclusions on the deliverability of the disputed LP 2 sites, I have taken careful note of the lpa's submissions that the allocated sites were found "sound" by the Inspector when he examined LP 2 and that the sites continue to be listed in the Annual Monitoring Report (AMR). That said, LP 2 was examined in late 2014 based on a draft plan submitted for examination in mid-2014 and no doubt based on evidence obtained during 2013. The November 2016 AMR, other than containing a list, provides no detailed assessment of the sites. These assessments are, in my view, snapshots in time, which in the case of LP 2 were undertaken between 3 and 4 years ago. The deliverability of these sites needs to be kept under robust review and, given the paucity of information contained in the AMR, the value of these in making an up-to-date assessment of the HLS is limited.
22. To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable<sup>8</sup>. PPG<sup>9</sup> indicates that the 5-year HLS must be underpinned by "*...robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out.*"
23. At the inquiry, the lpa provided an updated assessment of the deliverability of the disputed sites. However, the information provided on each site was limited and indeed the lpa's witness acknowledged that he did not have detailed information on the sites. The appellant's submission that the lpa's evidence regarding deliverability was based on, "*...discussions with others about discussions with others*" is an apt description. In my view, the lpa's evidence on deliverability relating to the LP 2 sites falls well below the

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<sup>7</sup> Table AB 1 submitted by the lpa at the inquiry.

<sup>8</sup> Footnote 11, National Planning Policy Framework.

<sup>9</sup> Paragraph 030 Ref. ID: 3-03020140306.

threshold set by PPG in that it is neither robust nor clearly and transparently set out. I have similar concerns regarding the inclusion within the 5-year supply of 100 units at Warsash Maritime Academy. Although this is a substantial site, the level of detail provided by the lpa on its deliverability is thin and lacks clarity and transparency.

24. LP 3 allocates some 371ha of mainly greenfield land at Welbourne to deliver some 6,000 dwellings and the lpa includes some 425 units within the 5-year supply in years 4 and 5. The delivery of Welbourne is a major undertaking and already the delivery of units has been pushed back in the programme. At one time the lpa considered that the delivery of dwellings would commence in 2016 with 120 units being completed by the end of the first quarter in 2017. Whilst I accept that significant pre-planning work has been carried out, a delivery partner will not be appointed until the beginning of 2018, major planning applications will have to be prepared and already, albeit as a precaution, the lpa is contemplating the use of compulsory purchase powers. Whilst I acknowledge the lpa's commitment to the delivery of Welbourne, on the evidence before me, it would appear that the potential to deliver a significant number of units towards the end of the 5-year period is optimistic.
25. In light of these findings, I am unable to safely conclude that at least 315 units, comprising the disputed list of LP 2 sites and the brownfield site at Warsash Maritime Academy, are capable of being considered as deliverable within the 5-year period. In this context, the lpa cannot demonstrate a 5-year supply of deliverable housing land.
26. In the scenario where the up-to-date OAN is used to derive the 5-year housing requirement and using the lpa's supply figures the lpa accepts that it could not demonstrate a 5-year HLS. At most, the evidence indicates that there would be a supply of some 3.6 years. However, given my conclusions regarding the deliverability of the disputed sites, I consider the HLS would be marginally over 2 years.
27. Drawing all of the above together, on whatever approach is used to identifying the 5-year housing land requirement, the lpa cannot demonstrate a 5-year supply of deliverable housing land. Indeed, on the balance of probabilities the available supply is well below the 5-year threshold.

#### Issue 2 – Best & Most Versatile Agricultural Land

28. The majority of the site is Grade 1 and the remainder Grade 2 agricultural land and is classed as best and most versatile land<sup>10</sup> (B&MV). CS Policy CS16 seeks to prevent the loss of B&MV. The Framework does not place a bar on the development of B&MV agricultural land. Framework paragraph 112 identifies that where development would involve the use of B&MV land, the economic and other benefits of that land should be taken into account and goes on to say where significant development is demonstrated to be necessary the use of poorer quality land should be used in preference to that of a higher quality i.e. apply a sequential approach. Here, given the appeal site extends to some 5.5ha, this proposal is not, in my view, a significant development where the sequential approach is engaged.

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<sup>10</sup> Annex 2, National Planning Policy Framework.

29. CS Policy CS16 was predicated on guidance contained in PPS7<sup>11</sup>, which the Secretary of State in his 2006 decision<sup>12</sup> described as containing a strong presumption against the loss of land of high agricultural value. PPS7 is no longer extant and CS Policy CS16, given that it says in a straightforward manner that it will prevent the loss of B&MV agricultural land without an opportunity to balance potential harm against potential benefits, is, in my view, inconsistent with the Framework and subject to the guidance contained at Framework paragraph 215.
30. The development would result in the permanent loss of B&MV agricultural land and as such would conflict with the provisions of CS Policy CS16. Accordingly, it must feature on the negative side of the planning balance, albeit the scale of the permanent loss would be limited.

#### Issue 3 – Character & Appearance

31. The appeal site abuts but lies outside the defined settlement boundary of Portchester. Whilst the development plan treats the area as countryside it is not subject to any landscape designation. Relevant development plan policies are CS Policies CS14 and 17 and LP 2 Policy DSP6. Policy CS14 indicates that development outside the defined settlement boundary will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Policy CS 17 seeks high quality design and layout and development should respond positively to and be respectful of key characteristics of the area including landscape. Except for certain categories of development, which do not apply in this case, LP 2 Policy DSP6 has a presumption against new residential development outside the defined settlement boundary. As such the proposal would be in conflict with LP 2 Policy DSP6.
32. Core Principles of the Framework seek to: ensure that planning secures high quality design ensuring that account is had to the different roles and characters of different areas recognising the intrinsic character and beauty of the countryside and a contribution to the conservation and enhancement of the natural environment. Framework paragraph 109 reiterates that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.
33. Both parties referred to various landscape character assessments. Of these the Fareham Borough Landscape Assessment examines the finest grain and is, in my view, the most relevant. In terms of landscape character, the appeal site sits on the eastern edge of Local Landscape Character Area (LCA) 12–Cams Wicor Coastal Fringe and to the south and east of LCAs 36 and 38 Urban Areas of Downend and Portchester South. LCA 12 is described as a discrete parcel of open landscape contained by the coast and the urban fringe. Whilst the main feature of this LCA is the extensive parkland and woodland of the Cam Hall Estate on its western edge the description notes that the LCA includes areas of open amenity landscape, fringe pasture and coastal industry to the east. The essential characteristics of the area are: an area of flat or gently undulating land occupied by mixed but open landscapes; a strong coastal influence and a strong fringe character with

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<sup>11</sup> Planning Policy Statement 7: Sustainable Development in Rural Areas.

<sup>12</sup> APP/A1720/A/05/1176455.

valuable areas of open space with attractive views out across Portsmouth Harbour and to Portsdown Hill and the Cams Hall Estate. The enhancement priorities for the area are to: maintain the open unbuilt character, particularly the estuary and coastal margins and improve the landscape quality of areas which lie between the settlement boundaries and the coast.

34. In terms of landscape and visual impact, whilst the appellant and the lpa use different terminology, in my view they both result in broadly the same outcome. Both parties agree that there would be substantial and adverse landscape and visual impacts. What is in dispute is the spatial extent over which these adverse effects would be experienced and whether the appeal site should be classed as a "valued" landscape.
35. In terms of visual impact, I had the opportunity to extensively walk the roads immediately around the site and the publicly accessible areas to the west. In addition, I visited Portsdown Hill and was able to assess the impact of the development from publically accessible vantage points.
36. Within the immediate area of the site from Cranleigh Road along its southern boundary and from Cranleigh Road southwards towards the junction with Gatehouse Road, the visual impact of the development to be at its highest, i.e. substantial and adverse. Further to the west along Cranleigh Road and from vantage points on the public footpaths and open space to the west, parts of the development, mainly the upper storeys and roof planes would be visible. However, the visual impact of the development would be significantly reduced by the degree of separation and the presence of existing tree/hedge planting and new boundary planting that could be conditioned as part of any permission. The magnitude of this impact would range from moderate to minor adverse depending on distance from the site.
37. Given there is no public access to the site and given the extent of intervening planting and industrial development on the foreshore there would be no material impact on views out over Portsmouth Harbour. In this context, the development would only have a limited adverse impact on views towards Portsdown Hill. The development would be in the foreground of the built-up area to the north and east and would not obscure publically available views of the hill from the east.
38. From public vantage points on Portsdown Hill there are sweeping panoramic views across Portchester and Portsmouth Harbour. Whilst the development would be noticeable, it would be seen as a modest extension of the existing built-up development to the north and east and against the backdrop of the housing area to the south of Cranleigh Road and mature planting beyond. The visual impact of the development would be mitigated by the above factors and the degree of separation from Portsdown Hill. Views of Portsmouth Harbour would not be interrupted or obscured and the wide sweep of the panoramic views would be maintained. In this context, the visual impact of the development from these vantage points would be minor.
39. Turning to whether the appeal site should be identified as a "valued" landscape and in the context of Framework paragraph 109 one whose enhanced planning status should be taken account of in the balancing exercise. I have taken careful note of the submissions made by interested persons and I was left in no doubt about their views on value. All landscapes are valued by someone at some time, particularly countryside

that is threatened by development. However, that does not necessarily make it a valued landscape for the purposes of Framework paragraph 49.

40. Although the Framework refers to valued landscapes it does not provide a definition of what type of landscape that might be. Framework paragraph 109 starts by reiterating the wider objective of enhancing the natural environment, which I take to mean the countryside in general and then it goes on to refer to valued landscapes, which must mean something more than just countryside in general. Case law<sup>13</sup> and Inspectors' decisions have identified that "valued" means something more than popular, such that a landscape was "valued" if it had physical attributes which took it out of the ordinary. In addition, the Guidelines for Landscape and Visual Impact Assessment (GLVIA3), provides at Box 5.1 a range of factors that can help in the identification of valued landscapes. These include landscape quality/condition; scenic quality; rarity, representativeness; conservation interests recreation value; perceptual aspects and associations. Whilst some of the factors go beyond the threshold identified by case law the Box 5.1 headings provide a useful context within which to assess "value". However, this is not a technical process and relies on subjective, albeit informed professional, judgement/experience.
41. Given the urbanising influence of built development on the northern eastern and southern boundaries and the generally overgrown nature of the site, I consider the landscape quality/condition of the site to be low/medium. For similar reasons, the site displays limited aesthetic appeal and it has low scenic value. Rarity and representativeness can be dealt with together. This is a landscape that does not contain rare landscape types or features. As such in terms of rarity and representativeness, I consider the value of the site/landscape to be low.
42. Given that the site has been neglected for some considerable time, the presence of the badger sett and the submissions regarding its ecology, it attracts a medium value for its conservation interest. There is no public access to the land other than it being a piece of a larger area of open land and has low recreational value and a medium value in terms of perceptual aspects. As far as I am aware the site /landscape has no cultural associations and as such attracts a low value. Reiterating again that this is not a technical exercise, drawing the Box 5.1 factors together, I consider the nature and value of the landscape of the appeal site to be ordinary/low. Combining this "score" with the case law requirement that the landscape should display physical attributes that takes it out of the ordinary, I conclude, that when looked at in the round the appeal site is not a Framework paragraph 109 valued landscape and does not benefit from the enhanced planning status that such an attribution would bring to the balancing exercise.
43. On this issue, the development would have a highly localised substantial and adverse impact on landscape character and visual impact. However, this impact would reduce with distance and for the most part in the wider area the landscape character and visual impact of the development would be

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<sup>13</sup> Stroud District Council v Secretary of State for Communities and Local Government [2015] EWHC 488 (Admin) & Cheshire East Borough Council v Secretary of State for communities and Local Government [2016] EWHC 694 (Admin).

minor moderate. That said the landscape and visual harm resulting from the development would conflict with CS Policies 14 and 17 and LP 2 Policy DSP6.

## **Other Considerations**

### Highways

44. I understand the concerns raised by residents particularly regarding the impact of traffic on congestion on the wider network and on Hatherley Crescent/Cornaway Lane at school dropping off/pick-up times. The planning application was accompanied by a robust Transport Assessment (TA) the scope of which was agreed with Hampshire County Council (HCC) as the Highway Authority (HA). In light of this study and its findings, the HA and the lpa, subject to the imposition of appropriate planning conditions, have no objection to the proposal on highway safety or traffic generation grounds. I have no reason to disagree with those conclusions.
45. In terms of the impact on the wider area, the TA concludes that the capacity of junctions within the study area would not be significantly impacted upon and that the estimated marginal increases in queue lengths would not significantly impact on the operation of the highway network. Congestion occurring at school drop off and pick-up times is restricted to short periods of the day and occurs only on weekdays during term time. Given the location of the site directly abutting the school, the development would be unlikely to generate additional vehicular traffic to and from the school. In my experience, additional traffic generated by the development would only likely to have an impact during the short morning drop-off window. These impacts are not a reason to withhold permission.

### Ecology

46. The site is located some 350m from the Portsmouth Harbour Site of Special Scientific Interest (SSSI) which forms part of the wider Portsmouth Harbour Special Protection Area (SPA) and Ramsar Site. The appellant submitted ecological appraisals and produced an Ecological Construction and Management Plan. Given the proximity of the site to the national and internally designated sites referred to above, there is potential for the development to affect the interest features for which they were designated.
47. The appellant submitted to the lpa a Habitat Regulations Assessment (HRA), which has been assessed by Natural England (NE). Based on what I consider to be a robust study, the HRA concludes that, having regard to measures that could be built-into the scheme and a financial contribution to the Solent Recreation and Mitigation Partnership, significant effects are unlikely to occur either alone or in combination on the interest features of the SPA and Ramsar. In light of these finding, and similar to the conclusion reached by NE, I conclude that an appropriate assessment under the regulations<sup>14</sup> is not required. Similarly, subject to the development being carried out in accordance with the details submitted with the application, NE indicates that the development would not damage or destroy the interest features for which the Portsmouth Harbour SSSI has been notified. Again, I have no reason to disagree with that conclusion.

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<sup>14</sup> The Conservation of Habitats and Species Regulations 2010 (As Amended).

48. There is an active badger sett within the site, which the appellant proposes to relocate within the area of public open space to the west. Badgers and their setts are protected by legislation<sup>15</sup>. Whilst the lpa has no objection to the relocation, the developer would require a separate licence from NE to remove the badgers. Whilst I note the concerns raised regarding the efficacy of artificial badger setts, they are, in my experience, in common usage and successful. I have no reason in this case to conclude there would be unacceptable harm or loss.
49. From the representations made both orally and in writing, I am in no doubt that the appeal site is highly regarded by local residents and the adjacent primary school as an ecological resource. The school's activities in introducing its pupils to the natural world are substantial and nationally recognised. Although the appeal site is privately owned and there is no public access to it, I recognise that the school views the site as a resource and an indirect source for the wildlife that inhabits the school site. Clearly whilst there would be some loss of habitat, this relates to many species that are common and widespread. The proposed area of public open space albeit it would be divorced from the school grounds by a housing estate, would be publicly available and could be laid out and managed as an improved ecological resource. Moreover, the tending and maturing of private gardens does provide a range of diverse habitats for a wide range of species. Whilst not a direct replacement the variety of habitats provided by private gardens would mitigate any impact on local ecology.
50. Drawing all of the above together, I conclude that the proposed development would not have a materially unacceptable effect on local ecology.

#### Education and Health

51. The development would generate a demand for 31 primary school places and 22 secondary school places. Research by the appellant identifies that the 5 infant/junior schools in Portchester are full. The Northern Infant school has recently been expanded and the Northern Junior School has a proposal to expand in 2019. HCC as the local education authority (LEA) indicates that the local secondary school has spaces available to meet the needs of the development. Whilst there is pressure on local primary schools, the appellant's submission that some of the existing school places are taken up by pupils from out of the school planning area, which could be used by local children, is not disputed by the lpa. There is no objection from the lpa or LEA on the grounds that the proposal would result in unacceptable pressure on local education infrastructure. I have no reason to disagree.
52. Evidence submitted by the appellant indicates that all primary healthcare centres within some 2 miles of the site are currently accepting patients. Whilst there were submissions that appointments are not easy to obtain, this is not a local problem and is something that occurs nationwide. There is no objection from the local providing body for primary care or the lpa.

#### Benefits

53. The proposed development would deliver economic, social and environmental benefits. Chief amongst these are that the proposal would

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<sup>15</sup> Protection of Badgers Act 1992.

deliver up to 120 homes including up to 48 affordable units. Economic benefits that would flow from the application include those arising from employment during the development phase; a New Homes Bonus payment and increased Council Tax revenues. When undertaking the planning balance factors such as these are generally held to be benefits of development albeit they are benefits that would occur from most developments.

#### S106 Undertaking

54. Framework paragraph 204 and CIL Regulation 122 say that Planning Obligations should only be sought and weight attached to their provisions where they meet all of the following tests. These are: they are necessary to make the development acceptable in planning terms; they are directly related to the development; and they are fairly and reasonably related in scale and kind to the development.
55. NE's lack of objection to the development is based on the developer making a contribution to the implementation of the Solent Recreation Mitigation Scheme. The purpose of the contribution is to mitigate disturbance of the Portsmouth Harbour SSSI and the wider Portsmouth Harbour Special SPA and Ramsar Site. The UU provides a mechanism for the provision of affordable housing required by development plan policy and the provision and retention of the public open space. These obligations are necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, in this respect, the UU is consistent with the guidance at Framework paragraph 204 and Regulations 122 of the CIL Regulations and where appropriate, I have attached weight to them in coming to my conclusion
56. The UU provides for (i) the submission of a Full Travel Plan; (ii) the payment of £5,750 to Hampshire County Council made up of £750 towards the cost of approving a Full Travel Plan and £5,000 to monitor compliance with it; (iii) the appointment of a Travel Plan Coordinator and (iv) a Travel Plan Bond.
57. The submission of a Travel Plan is a matter that could be dealt with by the imposition of an appropriate condition. Here, the only explanation I have for the monitoring fees is that *"it has been assessed based on the highway authority's experience with regards to monitoring such developments and is justified to ensure that the modal targets within the Travel Plan area achieved and if not there are "punitive" measures within the travel plan that can be instigated to endeavour to achieve the desired modal targets. The monitoring process ensures this check."*
58. The test contained within the Framework and CIL Regulation 122 i.e. "necessary to make the development acceptable in planning terms" is a high threshold in that the obligation has to be necessary and not merely desirable. Moreover, there is nothing in the Planning Acts, the CIL Regulations, the Framework or PPG that suggest that an authority could or should claim monitoring fees as part of a planning obligation. The monitoring of the Travel Plan is, in my view, one of the functions of the County Council. Despite my request for supporting evidence, I conclude that

in the absence of a full justification supported by evidence<sup>16</sup> the payment of a monitoring fee and the provision of a Travel Plan Bond are unnecessary to make the development acceptable in planning terms nor am I in a position to conclude that the requested contribution and Bond are fair and reasonably related in scale and kind to the development. For these reasons, I consider the requested contribution does not accord with the tests set out in the Framework and CIL Regulation 122 and I have not taken it into account in coming to my decision.

### **The Planning Balance**

59. The starting point is that S38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 requires that decisions on applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
60. The site is located outside the settlement boundary of Portchester and does not fall within any of the categories of development that may be permitted by LP Policy DSP6; as such the proposal is in conflict with this policy. Both parties refer to CS Policy CS11, which refers to development within the settlement boundaries of Portchester being permitted. Given the specific nature of this policy and the location of the site outside the settlement boundary, I consider this policy is not relevant to the overall planning balance. I have concluded that the proposed development would have an adverse impact on landscape character and a substantial adverse visual amenity albeit that impact would be highly localised. As such the proposal would be in conflict with CS Policies CS14 and CS17. The proposal would result in the loss of B&MV and would be in conflict with CS Policy CS16.
61. Paragraph 2 of the Framework confirms that it is a material consideration in planning decisions. The fourth bullet point of Framework paragraph 14 has 2 limbs. The first limb indicates that where the development plan is absent, silent or relevant policies are out-of-date planning permission should be granted unless 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. The second limb indicates that development proposals should be granted unless or specific policies in the Framework indicate development should be restricted. Framework paragraph 49 says that relevant policies for the supply of housing should not be considered up-to-date, if the lpa cannot show a 5-year supply of deliverable housing sites. Framework paragraph 215 indicates that due weight should be given to relevant policies in existing plans according to their consistency with the Framework.
62. In relation to housing land supply, the lpa cannot demonstrate a 5-year supply of deliverable housing sites. In this context, the decision of the Supreme Court<sup>17</sup> indicates that such a shortfall triggers the fourth bullet point of Framework paragraph 14. In this case, based on the evidence before me it is only the first limb of the fourth bullet point that is engaged.

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<sup>16</sup> Planning Policy Guidance, Paragraph: 004 Reference ID: 23b-004-20150326.

<sup>17</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin) .

The appellant and the Ipa agree that CS Policy CS14 and LP 2 Policy DSP6 are not relevant policies for the supply of housing and I have no reason to disagree. Given, the nature of CS Policy CS 17 – first bullet point, I consider this is not a relevant policy for the supply of housing either.

63. Based on the evidence before me the housing land supply stands at just over 2-years resulting in a significant shortfall. I acknowledge that the Ipa is seeking to address its ongoing housing requirements through the preparation of the Local Plan Review and the promotion of the sustainable Urban Extension at Welbourne. That said, a consultation draft of the Local Plan Review is not anticipated to be published until September 2017 and I would not expect that plan to be adopted before mid-2018 at the earliest. Welbourne is the subject of an adopted LP and will be progressed through the appointment of a development partner who will not be identified until early 2018. Once identified the Ipa/development partner will subsequently need to involve themselves in land acquisition through negotiation and/or compulsory purchase and to submit/determine major planning applications. On all the evidence before me, it appears to me, given the scale of the development and the constraints involved, which include the provision of a new junction on the M27 (albeit up to 500 units may be permitted before the new junction is required), the potential for significant development within the 5-year period is limited. In these circumstances, the material shortfall in housing land supply will continue and the backlog of housing required to meet local needs will grow.
64. As far as I am aware there are no constraints that would delay this development and as such granting permission would, in line with the clear objectives spelt out at Framework paragraph 47, provide for a significant and material boost/contribution to meeting housing needs within the District, particularly affordable housing. Drawing all this together, I consider that the contribution the appeal site could make to meeting the District's housing needs attracts very substantial weight in the planning balance.
65. Whilst, the objectives of CS Policy C14, CS 17 and LP 2 Policy DSP6 in seeking to protect the countryside from development are consistent with the fifth Core Principle identified at Framework paragraph 17, I conclude in this case that the limited harm in terms of the loss of B&MV agricultural land and landscape character and visual impact would not significantly and demonstrably outweigh the benefits of this scheme in making a material contribution to the significant shortfall in housing land. Accordingly, having regard to Framework paragraph 14, I consider the proposed development represents sustainable development.
66. In coming to the above conclusion, I have had regard to the appeal decision issued by the Secretary of State in 2006. However, I consider this decision was issued in the context of a materially different development plan context. Then, although located in countryside, the area was also identified in the development plan as a Local Gap and a Coastal Zone. Here local policy indicated that development that would physically or visually diminish undeveloped land within the gap would not be permitted. Now, although still defined for planning purposes as countryside, the open area to the west and south of the built-up area of Portchester is no longer classed as a Local Gap or within the Coastal Zone.

67. For the reasons, given above and having regard to all other considerations, I conclude that the appeal should be allowed.

### **Planning Conditions**

68. For the avoidance of doubt and in the interests of proper planning and I have imposed a condition relating to the specification of plans (4)<sup>18</sup>. Conditions relating the submission of details and the implementation of approved schemes in relation to: the construction of the estate roads (6); boundary treatment (7); archaeological investigations (8); foul and surface water drainage (9); an arboricultural assessment (10); existing and finished ground level and finished floor levels (11); the prevention of mud on the highway (12) construction traffic access (13) and the submission of a Travel Plan (14) are reasonable and necessary in the interests of the appearance of the area, highway safety, the identification and preservation of potential archaeology and the protection neighbours' living conditions. Conditions relating the prevention of fires (15), hours of operation (16); the treatment of hard surfaces (17) and a restriction on eaves height (20) are reasonable and necessary in the interests of appearance and neighbours' living conditions. In the interests of the appearance of the area, a condition relating to landscape implementation and maintenance (18) is necessary. In the interests of ecology, a condition requiring the development to be carried out in accordance with the submitted Ecological Construction and Management Plan (19) is necessary. Where necessary and in the interests of precision and enforceability I have reworded the suggested conditions.
69. At the inquiry, the lpa and the appellant agreed that the suggested conditions relating to boundary treatment, access details, external lighting/floodlighting and the insertion of roof lights were matters that were covered by the submitted plans, were unnecessary , duplicated other conditions or were matters that could be dealt with as part of the reserved matters submissions. I have not imposed these conditions.

*George Baird*  
Inspector

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<sup>18</sup> Numbers relate to those in the Schedule of Conditions.

## **Annex A**

### **SCHEDULE OF CONDITIONS**

1. Details of the appearance, scale, layout and landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
4. The development shall be carried out in accordance with the following approved drawings: Location Plan - Drawing 6132 LOC Rev D and J-D1708.00 Site access Layout and Highway Improvements.
5. No housing development including gardens and roads shall take place to the west of the hedgerow running north to south through the site as shown on Drawing No. 01 Rev W- Illustrative Site Plan.
6. No development shall commence until details of the width, alignment, gradient and type of construction proposed for any roads, footways and/or access/accesses, to include all relevant horizontal and longitudinal cross sections showing the existing and proposed ground levels, together with details of street lighting (where appropriate), the method of disposing of surface water, and details of a programme for the making up of roads and footways have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
7. No development shall commence until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwellings are first occupied or in accordance with a timetable agreed in writing with the local planning authority and shall thereafter be retained at all times.
8. No development shall commence until a preliminary archaeological survey establishing the location, extent, nature and significance of archaeological remains on the site including a mitigation strategy, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the agreed mitigation strategy.
9. No development shall commence on site until details of sewerage and surface water drainage works to serve the development hereby permitted have been submitted to and approved in writing by the local planning authority. None of the dwellings shall be occupied until the drainage works have been completed in accordance with the approved details.
10. No development shall commence until an Arboricultural Impact Assessment Report and Method Statement for tree/hedgerow protection has been

- submitted to and approved in writing by the local planning authority and the approved scheme implemented. The tree/hedgerow protection shall be retained throughout the development period until such time as all equipment, machinery and surplus materials have been removed from the site.
11. No development shall commence until details of the internal finished floor levels of all of the proposed buildings in relation to the existing and finished ground levels on the site and the adjacent land have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  12. No development shall commence until details of the measures to be taken to prevent spoil and mud being deposited on the public highway by vehicles leaving the site during the construction works have been submitted to and approved in writing by the local planning authority. The approved measures shall be fully implemented upon the commencement of development and shall be retained for the duration of construction of the development.
  13. No development shall commence until the local planning authority have approved details of how construction traffic will access the site, how provision is to be made on site for the parking and turning of operatives and delivery vehicles and the areas to be used for the storage of building materials, plant, excavated materials and huts associated with the implementation of the permitted development. The areas and facilities approved in pursuance to this condition shall be made available before construction works commence on site shall thereafter be kept available at all times during the construction period, unless otherwise agreed in writing with the local planning authority.
  14. Prior to the commencement of construction works a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall include arrangements for monitoring and effective enforcement. Development shall be carried out in accordance with the approved details.
  15. No materials obtained from site clearance or from construction works shall be burnt on the site.
  16. No work relating to the construction of any of the development hereby permitted (including works of demolition or preparation prior to operations) shall take place before the hours of 0800 or after 1800 hours Monday to Friday, before the hours of 0800 or after 1300 hours on Saturdays or at all on Sundays or recognised public holidays, unless otherwise first agreed in writing with the local planning authority.
  17. No development shall proceed beyond damp proof course level until details of the finished treatment of all areas to be hard surfaced have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and the hard surfaced areas subsequently retained as constructed.
  18. The landscaping scheme submitted under Condition 1 above, shall be implemented within the first planting season following the commencement of the development or as otherwise agreed in writing with the local planning

authority and shall be maintained in accordance with the agreed schedule. Any trees or plants which, within a period of 5 years from first planting, are removed die or become seriously damaged or defective, shall be replaced, within the next available planting season, with others of the same species, size and number as originally approved.

19. The development shall be carried out strictly in accordance with the Ecological Construction and Management Plan dated August 2016 and updated November 2016.
20. The dwellings shall not exceed two-storey eaves height.

## **ANNEX B**

### **APPEARANCES**

#### FOR THE APPELLANT

Christopher Boyle QC, instructed by the Bryan Jezepeh Consultancy.

He called:

Steven Brown BSc (Hons) Dip TP, MRTPI  
Woolf Bond Planning.

Liz Bryant MA, CMLI  
Allen Pyke Associates.

Michael Knappett BSc (Hons), BTP, MRTPI.  
Bryan Jezepeh Consultancy.

#### FOR THE LOCAL PLANNING AUTHORITY

Paul Stinchcombe QC, instructed by Fareham Borough Council

He called:

Andy Blaxland  
Director, Adams Hendry Consulting Limited.

Nicola Brown BA (Hons), BLand Arch, CertUD, CMLI  
Director, Huskisson Brown.

#### INTERESTED PERSONS

Mr Mullen.  
Mrs Fox.  
Ms Sawyer.  
Mr Woodman Portchester Civic Society.  
Cllr Price.  
Cllr Walker.  
Cllr Bell.  
Cllr Fazackarley.  
Cllr Cunningham.  
Ms Morton, Wicor Primary School.  
Mr Cable.  
Mr Britton.  
Mrs Kirk.

#### DOCUMENTS SUBMITTED AT THE INQUIRY

- Doc 1 - Phides Estates (Overseas) Limited and Secretary of State for Communities and Local Government and Shepway Council and David Plumstead [2015] EWHC 827 (Admin).
- Doc 2 - Supplementary Tables AB1, AB2 & AB3 to the evidence of Mr Blaxland.

- Doc 3 - Additional Suggested Condition – Field A.
- Doc 4 - Note in response to question from Mr Boyle.
- Doc 5 - Submissions by Cllr Walker.
- Doc 6 - Submissions by Cllr. Price.
- Doc 7 - Submissions by Cllr. Bell.
- Doc 8 - Submissions by Cllr Fazackarley.
- Doc 9 - Submissions by Cllr Cunningham.
- Doc 10 - Submissions by Portchester Civic Society.
- Doc 11 - Submissions by Mr Cable.
- Doc 12 - Submissions by Wicor Primary School.
- Doc 13 - Submissions by Mrs Kirk.
- Doc 14 - Summary of S106 Unilateral Undertaking.
- Doc 15 - Lpa CIL Compliance Schedule.
- Doc 16 - Email dated 27 April 2017, Response by Hampshire County Council regarding S106 Unilateral Undertaking Travel Plan Contributions.
- Doc 17 - S106 Unilateral Undertaking.
- Doc 18 - Minutes of Planning Committee 24 March 2016.
- Doc 19 - Appellant’s application for coasts.
- Doc 20 - Lpa response to the application for costs.

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED

- Doc 21 - Appellant’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).
- Doc 22 - Lpa’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).



## Appeal Decision

Hearing Held on 14 and 15 August 2018

Site visit made on 15 August 2018

**by Kenneth Stone BSc Hons DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 10<sup>th</sup> September 2018**

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**Appeal Ref: APP/A1720/W/17/3192431**

**Sawmills Industrial Park, Wickham Road, Fareham, Hampshire PO17 5BT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by BST Warehouses Ltd against Fareham Borough Council.
  - The application Ref P/17/0189/FP, is dated 17 February 2017.
  - The development proposed is described as 'demolition, site clearance and remediation with the erection of 72 C3 residential dwellings and associated access, parking, ancillary infrastructure and landscaping works'.
- 

### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing applications for costs were made by BST Warehouses Ltd against Fareham Borough Council and by Fareham Borough Council against BST Warehouses Ltd. These applications are the subject of separate decisions.

### Procedural matters

3. Prior to validation the planning application was the subject of a screening direction issued by the Secretary of State for the Department for Communities and Local Government. The screening direction concluded that the proposed development was not EIA development.
4. The Council's Planning Committee considered the application following the appeal being lodged and resolved that had it had the opportunity to determine the application it would have refused permission for six reasons. Those putative reasons included reference to inadequate information in relation to land contamination, inadequate survey information in respect of protected species and the absence of a planning obligation. During the appeal and prior to the conclusion of the hearing further information was submitted to address issues related to land contamination and protected species and a Unilateral Undertaking (UU) planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 was executed and submitted. On this basis the Council confirmed it did not seek to pursue the reasons for refusal related to those matters. I address the planning obligations and matters arising out of that further information below. The sixth reason for refusal, related to highway

- matters, was not pursued by the Council following further information and discussion with the Highway Authority.
5. The remaining substantive issues between the parties related to the design quality of the scheme and the adequacy of infrastructure provision and these form the basis of the main issues set out below.
  6. The Solent is internationally important for its wildlife and three Special Protection Areas (SPAs) have been designated to protect over wintering birds. The Solent Recreational Mitigation Strategy (SRMS) requires contributions from all dwellings built within 5.6 Km of the boundaries of the SPA. The appeal site is located within the 5.6 Km zone of influence of the Solent SPAs and it is not disputed that a contribution is required and indeed such a contribution is secured in the UU.
  7. However, following the Court of Justice of the European Union judgement in the *People over Wind and Peter Sweetman v Coillte Teoranta*, case C-323/17 it is not permissible to take account of measures intended to avoid or reduce harmful effects of the plan or project on a European site at the screening stage under the Habitat Regulations Assessment. The proposed development is not directly connected with or necessary for the management of the Solent SPAs. Given the agreement between the parties that a contribution under the SRMS is required it is accepted and acknowledged that there would be a potential for the proposal to have a significant effect on the interest features of the site through the increased pressure resultant from an increase in the population resulting in increased visitor numbers with the potential for increased disturbance of the over wintering birds. Whilst the SRMS has been developed to mitigate such impacts given the recent judgement of the CJEU this cannot be taken into account at the screening stage and therefore it must be concluded that it is likely the proposal would have a significant effect, either alone or in combination with other developments, through the increased recreational pressure.
  8. The outcome of that conclusion is that an appropriate assessment must be carried out to determine whether or not the development would have an adverse effect on the integrity of the European site. But again given the justification for the required mitigation this is on the basis that there would be a significant effect that requires to be mitigated. The appropriate assessment therefore results in a conclusion that there is a risk of adverse effects on the integrity of the site. However, the HRA process then seeks to consider whether the adverse effects can be mitigated. In this regard there is a published mitigation strategy which has been agreed by various bodies including Natural England, the Statutory Nature Conservation Body. The appellant has provided a UU planning obligation which, among other matters, secures the payment of the required contribution to meet the SRMS and would therefore adequately mitigate the adverse effects that would result from additional recreational pressure on the integrity of the SPAs. There is therefore no bar to development on this basis.
  9. The National Planning Policy Framework at paragraph 177 advises that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined. Given this proposal has

been the subject of appropriate assessment this has implications for the approach to decision making which I return to below in the planning balance.

## **Main Issues**

10. The main issues in this appeal are:

- Whether the proposed development would represent high quality design and contribute towards an attractive, inclusive, safe, well-connected and sustainable community as required by development plan and national policy; and
- Whether the proposed development makes adequate provision for a reasonable proportion of the necessary infrastructure required to support Welborne.

## **Reasons**

### *Background*

11. The statutory development plan for the area comprises the Local Plan Part 1: Core Strategy (CS), the Local Plan Part 2: Development Sites and Policies (DSP) and the Local Plan Part 3: The Welborne Plan (WP). In respect of this appeal the CS and the WP provide the relevant development plan policy framework against which to consider the development.
12. Policy CS13 of the CS provides for a Strategic Development Area north of Fareham to provide for housing and supporting environmental, social and physical infrastructure along with retail and employment floorspace. The aim is for the new community to be as self-contained as possible whilst complementing and supporting the established town centre of Fareham. The policy also sets out high level development principles for the new development.
13. The WP takes forward the strategic development area allocation and sets out the broad type, location, amount and character of the development of Welborne and is provided to guide decision making on future planning applications for the site. The Welborne Design Guidance (WDG) is a supplementary planning document to explain the Council's expectations in the design of Welborne. It builds on policies in the WP and aims to ensure Welborne will be a well-designed development that fits in with the landscape and provides a high quality place to live.
14. Both parties refer to the strategic allocation as a garden village and I understand that Welborne has been identified by the government as a Garden Village which will provide priority access to funding streams and support to assist in progressing the delivery of the 6, 000 homes on the site and the supporting infrastructure.
15. There is an outstanding application under consideration by the Council by Buckland Development Ltd for development of the strategic allocation.
16. The Statement of Common ground accepts that the proposed delivery of housing on the appeal site in advance of the outline planning permission being granted for the wider Welborne Area would, in this case be acceptable and would not prevent the delivery of the overall vision for Welborne and as such is acceptable in principle and as a standalone phase from the wider Welborne project. The proposal, for residential development for the site, is in accordance

with the Strategic Framework Diagram referenced in para 3.50 of the WP which identifies the site for residential development.

17. The appeal site is an existing industrial site occupied by various industrial buildings with the majority of the site laid to open hard standing. It is presently in a relatively low intensity use. There are changes in levels across the site with the eastern boundary of the site, adjacent the A32, being higher than the western boundary, formed by Forest Lane and the southern end of the site, adjacent to existing residential development, being lower than the fields and open countryside that rise to the north of the site.

### *Quality of Design*

18. The National Planning Policy Framework at paragraph 124 clearly advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve and that good design is a key aspect of sustainable development. At paragraph 127 the Framework further advises that decisions should ensure developments will function well, be visually attractive, sympathetic to local character, establish a strong sense of place and optimise the potential of the site to accommodate an appropriate amount and mix of development. Paragraph 130 is clear that account should be taken of local design standards or style guides or supplementary planning documents in reaching conclusions on the design of a scheme, with poor design being refused but design not used by decision makers to object to development if it accords with the expectations of policies.
19. The context within which this development is to come forward is as an early phase of the Welborne Garden Village. It may be seen not to prejudice the wider implementation and delivery of the Garden Village but it is still part of the wider allocation and obtains its in principle acceptance as part of the strategic allocation. The scheme must be considered in the context of the planning framework for Welborne, the strategic allocation, development management policies in the Welborne Plan and, as a material consideration to provide further advice and guidance on those policies, the Welborne Design Guide. The success of the project will for a significant part be dependent on the implementation of a high quality design. As the first proposals to be determined in that context it is imperative the aims and aspirations for the Garden Village are fully realised in all its constituent parts.
20. The overall design considerations of the scheme have a number of facets that interact and contribute to the character and layout of the scheme, including the arrangement of buildings, open space provision, the scale and bulk of buildings, parking areas and the communal garden area.
21. Policy WEL2 in the WP supersedes the high level development principles for Welborne as originally set out in CS13. These include a requirement for each phase to be well designed and incorporate a range of densities and building heights to create a series of attractive places with different and distinctive characters. The WP identifies four character areas including a Woodland Character Area at Figure 4.1. The WDG provides further advice on the expectations and division of the character in these character areas. The appeal site would be located within the 'Woodland Character Area'. In advising on the character of Welborne as a whole the WDG at 2.33 advises that the more sensitive areas of the development are those on the outskirts of the site. In these locations it is suggested development would be expected to be less

intensive and pre-dominantly 2-storey. Page 34 includes design guidance for the Woodland Character Area and indicates residential development should be predominantly 2 storey with occasional 2.5 storey pre dominantly detached and semi-detached with occasional short terraces and a mix of setbacks. The Woodland Character Area should be characterised by tree cover that is a dominant feature of the area, a layout that ensures surrounding woodland is visible from within the site and in particular locations be of a more rural character.

22. The appeal proposals are predominantly formed of short blocks of closely spaced terraces set in formal arrangements and with building heights that incorporate a significant proportion of building heights in excess of 2 storeys. The resultant layout, form and character is one of a more urban or suburban residential estate. The limited separation of spaces between a number of the terraces result in longer runs of building frontages dominating the spaces. The Crescent terrace to the south of the site and the group of housing enclosing the SUDs space to the north form distinctly urban typologies. Similarly the main housing group fronting the large open space with narrow plots and higher building heights, including up to three storeys, dominate the centre of the scheme and produce a very civic appearance.
23. There is an east west pedestrian route through the site which could link to the wider Welborne development and form part of the Green corridor and infrastructure required in the WP. The relationship of this with the large open area in the centre of the site contributes to a strong element of green infrastructure. However, its effectiveness is reduced to some extent by the subdivision from the SUDs area to the north and the children's play area and the constrained access points onto Wickham Road and Forest lane.
24. The large open space and the green route that runs through the site provide the potential for tree planting but given the limited other spaces and dominance of the road through the scheme this would not result in a Woodland Character where tree cover was a dominant feature. The nature of the road alignment and positioning of the blocks would restrict views to the wider areas beyond the site and reduce views to the woodlands beyond to glimpsed views rather than integrated within the overall design and contributing to the importance of woodland in those views.
25. In my view this conflicts with the Councils expectation for the area which would suggest lower intensity development in a more informal layout with a more rural character and could undermine WEL2 which seeks to ensure that development creates a series of attractive places with different and distinctive characters.
26. There are a number of locations where the layout provides flank walls and garden boundaries onto roads conflicting with the advice in the WDG and providing for poor or reduced surveillance of these sections of the site.
27. The northern section of the site is particularly unsuccessful in seeking to address the issues raised by the site. Whilst I acknowledge that the WDG seeks to promote perimeter block development it does not require only such a form of development and that would be inappropriate. This site is constrained is previously developed has significant variations in levels and other factors which may suggest that such an approach is not the only solution. However, many of the principles behind the perimeter block approach including natural

surveillance, defensible space, the separation and definition of public and private spaces are important concepts to retain. With the use of the parking courts many of these respected principles are lost. Much of the parking areas in these locations are poorly over looked are not readily distinguishable as private or public spaces or provide clear demarcation of ownership. They are poorly screened and are somewhat unrelieved unattractive large areas of hardstanding. Whilst it was suggested additional windows could be inserted in the flank walls of properties fronting these spaces to increase overlooking that does not address the basic issue. These windows would in any case at best be secondary windows or not to primary habitable rooms which would do little to improve passive surveillance of the parking areas.

28. These would conflict with WEL6 which requires development, amongst other matters, to provide a layout and design that will help to create safe well-connected neighbourhoods.
29. The small block of flats located at the entrance to the development appears shoehorned into this section of the site and has limited space for its setting or to provide amenity space for future occupiers of the building. The limited space to the building, the scale of the elevations and the proximity of tree planting would result in the southern space being unwelcoming and unattractive as a private amenity space for future occupiers.
30. The general appearance of the entrance to the site is somewhat compromised by the level of activity, limited space around the flat block, the additional private access for the four detached properties combining to produce an intensity of built form and level of activity that contributes to a more urban character for the scheme.
31. Bringing all these matters together I conclude that the proposed development would result in a development with a strong urban character conflicting with the more woodland character area proposed and the generally more informal and lower intensity of development rural character sought for this part of Welborne. This would result in a development which would compromise the expectations for the character and appearance of the area. The layout and design introduces elements that produce areas where surveillance would be poor and amenity provision for future residents was unacceptably constrained. On this basis the proposed development would not represent high quality design and would not contribute towards an attractive, inclusive, safe, well-connected and sustainable community as required by development plan and national policy.

#### *Necessary infrastructure*

32. Welborne as a new settlement which is aiming for the most part to be self-sufficient has been justified and evidenced on the basis of a delivery plan and assessment of the necessary infrastructure it will require to meet its needs. The WP is supported by an Infrastructure Delivery Plan and the extant application for the wider Welborne development is accompanied by an updated Infrastructure delivery plan.
33. The applicant has not submitted such a plan with their application albeit that such documentation is suggested to be appropriate in the WP. The Council have validated the application on the back of the applicant providing a note

- summarising how the development would contribute to the wider infrastructure costs for Welborne and a further note on these matters.
34. It was accepted at the hearing that the Council do not object to the specific costings the appellant has put forward as they have no evidence to challenge those.
  35. I also note that the appellant has drawn attention to the fact there is sufficient capacity in the local primary and secondary schools to meet the demands of the development and that there was sufficient capacity in the local doctors surgeries and dentists.
  36. However the principle of the development is predicated on the site forming part of the wider Welborne development and that as the new Garden Village develops there would be an expectation that the occupants of this development would use the services and facilities in the wider Welborne development and not travel to other areas. It is not unreasonable to expect all parts of the Welborne strategic allocation to make its proportionate contribution to the provision of the necessary infrastructure to support Welborne's future residents.
  37. The appeal site is a previously developed area of industrial land and will require significant decontamination. The decontamination costs form a significant portion of the costs in the appellants note to demonstrate that these are part of their contribution to the necessary infrastructure. However I have no evidence or clarity before me on whether the decontamination costs formed part of the wider Welborne IDP costs and whether the appellant's costs are of a similar scale. Similarly I have no indication as to whether by the appellant decontaminating this site that would reduce, or by how much, the cost that would be borne by the wider Welborne development. In these circumstances there is no clarity on whether there is cross subsidy such that would then justify reductions in other contributions.
  38. I note that the high costs of the development ascribed by the appellant but these appear in many instances to be the normal costs associated with a development of a previously developed site to a standard required by development plan policy. Whilst I acknowledge the higher per unit costs towards these matters as compared to the IDP costs divided across the wider Welborne development that does not address the issue. The evidence before me demonstrates that the appellant does not contribute towards infrastructure of schools, primary health care, extra care housing, community buildings, market square public realm sports facilities etc; indeed all of the social and services necessary to support a thriving community. What the costs provided show are costs associated with decontamination, the provision of green infrastructure, transport, and physical energy and drainage projects. But these are all necessary costs of the development.
  39. Overall, on the basis of the above, I conclude that the development does not make adequate provision for a reasonable proportion of the necessary infrastructure required to support Welborne. The proposal would therefore conflict with policy WEL41 which requires development to be undertaken in accordance with an agreed delivery plan unless there is suitable alternative appropriate infrastructure to adequately service the development.

## **Planning Obligations**

40. The appellant has secured planning obligations through a Unilateral Undertaking under sec 106 of the Town and Country Planning Act 1990. The UU contains six schedules which set out the obligations the owner undertakes to observe and perform.
41. Schedule one contains obligations related to highway works and a travel plan. These ensure that the highway works will be undertaken at the appropriate stage of development and follow the appropriate mechanisms. The travel plan will encourage sustainable travel. These matters are in accordance with policies WEL23 and WEL27 in the WP and are directly related to the development and fairly and reasonably related to the scale of the development.
42. Schedule 2 contains obligations which secure the provision of 22 affordable housing units, 15 as affordable rent and 7 as shared ownership. The obligations address issues including transfer, delivery, stair casing and release. Three wheelchair units are also secured. The provision of 30% of the units as affordable units is in accordance with policy WEL18 of the WP and is therefore fairly and reasonably related in scale and kind to the development.
43. Schedule 3 secures the provision and management of the open space and play area. These are consistent with the requirements of policies WEL29 and WEL35 of the WP and are fairly and reasonably related to the scale and kind of the development.
44. Schedule four secures the financial contribution required for the SRMS. The contributions are not used for the provision of infrastructure and so are not caught by the pooling restrictions under the Community Infrastructure Levy Regulations. The SRMS contributions support the management of the SPAs to mitigate the harmful impact of additional recreational activity on nesting birds/wading birds within the Solent region. The contributions are therefore fairly and reasonably related in scale and kind to the development.
45. Schedule 5 secures public access to the onsite routes to support the wider Welborne development and ensure access to the green corridors and general access through the wider allocation development as it comes forward. The provisions are therefore reasonably and fairly related to the scale and kind of the development.
46. Finally schedule 6 secures the provision and implementation of an Employment and Skills Plan in accordance with policy WEL43 to provide opportunities for local people to be involved in employment and training during construction. This directly relates to the implementation of the development and in part is directed towards the social dimension of sustainable development. The obligation is fairly and reasonable related to the scale and kind of the development.

## **Benefits of the Scheme**

47. The proposed development would provide for some 72 new dwellings in an Authority where the Council accept that it can only provide for between 3.5 years and 4 years of housing land supply. The houses would come forward now and be an early housing opportunity and first delivery from the Welborne allocation which will contribute to the Council's housing delivery target. This is a significant benefit but given the limited number of units I reduce the overall

weight of this factor and afford it moderate weight. Of those new houses the development would make provision for 15 affordable units, secured through the UU. The Council has a significant need for affordable housing but given the limited number of units provided, which is also no more than policy requires, I also attach moderate weight to this benefit.

48. The appellant suggests the remediation of the site is a key benefit of the scheme. Whilst the old industrial, somewhat dilapidated buildings, hard surfacing and previously developed land would be removed and the site brought into a more productive use this would be the case in any redevelopment of the site. On this basis I give this only limited positive weight as a benefit of the scheme.
49. The scheme would result in the moving of the main access on the A32 and removal of any vehicular access through the site between the A32 and Forest Lane. These are matters that would improve highway safety and are minor benefits of the scheme. Again they could be secured with any redevelopment of the site. I afford this limited positive weight.
50. The site would make provision for connection to the foul drainage network which could facilitate surrounding properties also connecting to the foul drainage system reducing the reliance on soakaways. This is a minor benefit of the scheme to which I attributed limited positive weight.
51. The appellant suggests that positive benefit derives from the landscaping and green infrastructure provided on the site. However, this is a necessary requirement to meet policy and ensure the development provides a good standard of amenity for future residents', to protect adjoining occupiers and addresses ecological requirements. It is also necessary to address the woodland character area within which it is proposed. It is not therefore a positive benefit of the scheme.
52. Adjoining the site is Mill House, a grade II listed building. The proposed development would remove existing large industrial structures close to the boundary and improve the setting of the listed building. This is a positive benefit to which I attribute moderate positive weight.
53. Any mitigation measures provided or secured in respect of the scheme are not positive benefits but seek to address and mitigate the impact of the development.
54. There would be economic benefits associated with the development including new homes bonus, CiL payments for which the development would be liable, the additional spend in the local economy during implementation of the development and the additional financial and community support derived from the increased population using services and facilities in the area once the development is occupied. I give this moderate positive weight.

### **Other matters**

55. The Council following the publication of the new Framework have confirmed that their supply of available housing land would be in the range of 3.5 to 4 years supply. The appellant accept that this is a reasonable range for the authority at this point in time. The Council cannot therefore demonstrate a 5 year supply of housing land.

56. The development would remove the existing buildings and hard surfacing from the land and de-contaminate the site. The Council originally provided a putative reason for refusal in respect of land contamination however upon receipt of further information have not continued with any objections to the scheme on that basis. The Council is satisfied that should permission be forthcoming land contamination could satisfactorily be addressed by condition and I have no evidence before me to disagree with those conclusions.
57. Similarly further information including further survey work and a mitigation strategy to address any concerns that may arise in respect of Dormice has been provided. Agreement has been reached between the parties that the most appropriate way forward is to accept that there is a strong likelihood that Dormice are on the site. On this basis the appellant has produce a Dormice mitigation strategy in the event it is demonstrated that they are. The Council, and County Council ecologist, accept that the mitigation strategy would address the effects of the development on Dormice if they were to be identified. On this basis a condition requiring the implementation of the Dormice mitigation strategy in the event Dormice were established to be on the site would be an appropriate way forward.

### **Planning Balance**

58. Given that the development has been subject to appropriate assessment the presumption in favour of sustainable development at paragraph 11 of the Framework does not apply. The proposal is therefore only to be considered on the basis of the section 38(6) balance such that the appeal should be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case I have concluded that the proposal would not be high quality design and would conflict with development plan policies CS13 WEL2 and WEL6. I have also concluded that the proposal would not provide adequate infrastructure contributions and would therefore conflict with WEL42.
59. The Council cannot demonstrate a 5 year housing land supply and therefore the provision of housing including affordable housing is a significant consideration. However I have given this only moderate positive benefit given the scale of the development. I have noted a number of other benefits associated with the scheme and take account of the weight I have ascribed to them above.
60. The Framework advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Given the conflict with the development plan and the advice on design in the Framework the other considerations do not indicate that a decision otherwise is appropriate. Albeit there is a shortfall in the housing land supply this is the first development in a Garden Village where design will be fundamental to its success and the shortfall of housing does not mean housing at any cost.

### **Overall conclusion**

61. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Simon Ricketts	Town Legal LLP
Gavin Hall	Savills
Richard Powell	Latchmoor Properties
Bruce Slattery	Jacobs Engineering
Jonathan Moore	MH Architects
Andrew Linfoot	Jacobs Engineering

### FOR THE LOCAL PLANNING AUTHORITY:

Luke Simpson	Adams Hendry
Alex Russell	Southampton & Fareham Legal Services Partnership
Justin Leach	LDA Design
Valerie Conway	VE Consulting
Maral Miri	Hampshire County Council

### INTERESTED PERSONS:

Mrs Brenda Clapperton	Secretary of Fareham Society
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### DOCUMENTS SUBMITTED DURING HEARING

- 1 Draft Unilateral Undertaking and summary Schedule submitted by appellant
  - 2 Comments on Revised National Planning Policy Framework submitted by Council
  - 3 Comments on revised national Planning Policy Framework, summary of outstanding issues and Dormouse mitigation strategy submitted by appellant
  - 4 Copy of e-mail from Council to Pins Case officer dated 10 August including NPPF statement, pre-application proposal, delivery trajectory for Welborne The Executive Leaders Announcement on HLS and extracts of Draft Planning Practice Guidance
  - 5 Copy of Judgement of European Court C323/17 People Over Wind and Peter Sweetman v Coillte Teoranta submitted by Council
  6. Copy of updated planning condition 2 to update plan reference numbers and copies of relevant plans (latest revisions)
  - 7 Copy of extract from Welborne Infrastructure Delivery Plan related to New Homes Bonus submitted by appellant
  - 8 Copy of various amended conditions submitted by appellant
  - 9 Original of signed, sealed and dated Unilateral Undertaking
  - 10 Appellants application for Costs
  - 11 Council's application for Costs.
- END



## Appeal Decision

Inquiry Held on 6 - 9 November 2018

Site visit made on 9 November 2018

**by Kenneth Stone BSc Hons DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12<sup>th</sup> April 2019**

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**Appeal Ref: APP/A1720/W/18/3199119**

**Land east of Posbrook Lane, Titchfield, Fareham, Hampshire PO14 4EZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Foreman Homes Ltd against the decision of Fareham Borough Council.
  - The application Ref P/17/0681/OA, dated 9 June 2017, was refused by notice dated 14 December 2017.
  - The development proposed is described as an 'Outline Planning Application for Scout Hut, up to 150 Dwellings, Community Garden, associated landscaping, amenity areas and means of access from Posbrook Lane in addition to the provision of 58,000 square metres of community green space'.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application was submitted in outline with all matters reserved for future consideration with the exception of access. The access details are shown on the plan 'Proposed Site Access 16-314/003E' which along with the 'Site Location Plan 16.092.01E' are the plans that describe the proposals. An illustrative plan was submitted and the latest iteration was 16.092.02F. However, this was for illustrative purposes only to demonstrate one way in which the site could be developed but does not form part of the formal details of the application.
3. Prior to the commencement of the Inquiry the Council and the appellant entered into a Statement of Common Ground. The original application had been submitted with the description of development in the banner heading above. The parties agreed that there was no requirement for the Scout Hut and removed this from the illustrative master plan and amended the description of development to reflect the amended proposed development.
4. I am satisfied that the proposed alteration to the scheme, which does not amend the red line boundary and makes only a minor adjustment to the overall scheme, is not material. I am satisfied that there would be no material prejudice to parties who would have wished to comment on the proposals and that the amended illustrative plan was available as part of the appeal documents and therefore available for parties to view and comment on. I have therefore considered the appeal on the basis of the amended description which

read as follows: 'Outline application for up to 150 dwellings, community garden, associated landscaping, amenity areas and a means of access from Posbrook Lane.'

5. In the Statement of Common Ground the Council and the Appellant agree that an Appropriate Assessment would be required in the light of The People Over Wind Judgement<sup>1</sup>. During the Inquiry a shadow Habitats Regulations Assessment document was submitted (APP4) to enable an Appropriate Assessment to be made. In this regard I consulted with Natural England to ensure that I had the relevant information before me if such an assessment were to be required. The main parties were given the opportunity to comment on Natural England's consultation response.
6. By way of an e-mailed letter dated 5 November 2018 the Secretary of State notified the appellant, pursuant to regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, that further information was required. The further information was publicised on 4 January 2019, a period of 31 days was given for the receipt of comments and the parties were given a period following the end of the publicity period to collate and comment on the matters raised.
7. I have had regard to all the Environmental Information submitted with the appeal including the original Environmental Statement, the Additional Information, the Shadow Habitats Regulations Assessment, the further responses and the parties' comments in reaching my conclusions on this appeal.
8. The Council has drawn my attention to a recent appeal decision, at Old Street, APP/A1720/W/18/3200409, which had been published since the Inquiry was conducted and in which similar issues were considered in respect of the Meon Valley. The parties were given the opportunity to comment on this decision.
9. The Government published a revised National Planning Policy Framework (the Framework), and updated guidance on how to assess housing needs as well as results of the Housing Delivery Test along with a technical note on 19 February 2019. The parties were given the opportunity to comment on how these may affect their respective cases. I have had regard to this information and the comments of the parties in reaching my decision.
10. I closed the Inquiry in writing on 19 March 2019.

### **Main Issues**

11. In the Statement of Common Ground the appellant and Council agree that with the completion of a satisfactory legal agreement reasons for refusal e through to l would be addressed. No objections to the Unilateral Undertaking were raised by the Council and these matters were not contested at the Inquiry. It was also agreed in the Statement of Common Ground that reason for refusal d could be overcome by the imposition of an appropriately worded condition, and I see no reason why this would not be appropriate.
12. On the basis of the above the remaining outstanding matters and the main issues in this appeal are:

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<sup>1</sup> The Court of Justice of the European Union judgement in the People over Wind and Peter Sweetman v Coillte Teoranta, case C-323/17

- The effect of the proposed development on the character and appearance of the area, including having regard to whether or not the site is a valued landscape and the effect on the strategic gap;
- The effect of the proposed development on the setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II\* listed buildings; and
- The effect of the proposed development on Best and Most Versatile Agricultural Land (BMVAL).

## Reasons

13. The development plan for the area includes The Local Plan Part 1: Core Strategy (2011 -2026) (LPP1), The Local Plan Part 2: Development Sites & Policies (2015) (LPP2) and The Local Plan Part 3: Welbourne Plan (2015) (LPP3).
14. LPP3 specifically addresses a new settlement at Welbourne and does not include policies that bear directly on the effects of the development the subject of this appeal. Its relevance is however material in the context of the wider housing land supply issues in the area.
15. In terms of LPP1 policy CS14 seeks to control development outside defined settlement boundaries seeking to resist proposals which would adversely affect its landscape character and function. While policy CS22 advises land within strategic gaps will be treated as countryside and development proposals will not be permitted where it affects the integrity of the gap and the physical and visual separation of settlements.
16. In LPP2 Policy DSP6 further advises in respect of residential development outside of defined urban settlement boundaries that it should avoid a detrimental impact on the character or landscape of the surrounding area. DSP5 addresses the protection and enhancement of the historic environment. In considering the impacts of proposals that affect designated heritage assets it advises the Council will give great weight to their conservation and that any harm or loss will require clear and convincing justification, reflecting the statutory and national policy positions.
17. Policy DSP40 in LPP2 includes a contingency position where the Council does not have a 5 year supply of housing land. It is common ground between the parties that the Council does not have a 5 year supply of land for housing albeit the extent, length of time this may persist and consequences are disputed. I address these latter matters further below however insofar as the parties agree that the Council cannot demonstrate a five year supply of housing land the contingency position in policy DSP40 is engaged and this advises that additional sites outside the urban area boundary may be permitted where certain criteria are met.
18. An emerging draft Local Plan, which in due course is anticipated to replace LPP1 and LPP2, was launched for consultation in autumn of 2017 but has now been withdrawn. At the time of the Inquiry I was informed that a further review is to take place following revisions to the National Planning Policy Framework and the Government's latest consultation in respect of housing figures. The Council propose to consult on issues and options relevant to the progression of the Council's new development strategy following the outcome

of the Government's recent consultation. Consultation on a new draft Local Plan is not now anticipated until the end of 2019.

19. The Titchfield Neighbourhood Plan 2011 – 2036 (TNP) is also emerging; it was published for consultation in July 2018 with a further draft submitted to the Council for a compliance check, in October 2018, prior to consultation as the submission draft. At the Inquiry it was confirmed that further documents were submitted to the Council and that the TNP complied with the Statutory requirements. The Council undertook Consultation on the submission draft between November 2018 and January 2019 but at this point in time the plan has not yet been submitted for independent examination. The TNP includes a plan identifying the strategic gap, the Meon gap, and the Defined Urban Settlement Boundary (DUSB) as well as housing policies which review the DUSB (DUSB 1) and address windfall sites (H1), affordable housing (H2), Local Need (H3) and Development Design (H4).

*Character and Appearance, including Valued Landscape and Strategic Gap*

20. The appeal site is an area of some 6.6 ha of open grazing field on the east side of Posbrook Lane. The land gently slopes from its north-west corner towards its eastern edge. The site is segregated from Posbrook Lane by a hedgerow but for the most part the site is open with little demarking fences, trees or hedge rows. There is some evidence of a previous subdivision of the site on a modern fence line however only limited post foundations remain and generally the whole site has a reasonably consistent grazed grassland appearance.
21. To the north, the appeal site abuts the settlement edge of Titchfield at an estate called Bellfield. The urban edge is open and harsh with little by way of softening landscaping. Towards the south-western corner the site abuts a cluster of buildings that includes the farmstead of Posbrook farm and which includes two Grade II\* listed buildings (the Farmhouse and the southern barn). The boundary between these is screened for the most part by a substantial tree and hedgerow belt. Beyond these and towards the south are open agricultural fields. To the east the site slopes down to the Titchfield Canal, valley floor and River Meon beyond.
22. The Meon Valley is a major landscape feature that runs through the Borough and slices through the coastal plain. The parties agree that the site is located within the Lower Meon Valley Character Area but disagree as to the finer grain character type as detailed in the 1996 and 2017 Fareham Landscape Assessments. The appellant points to the 2017 Assessment identifying the western part of the appeal site as being identified as open coastal plain: Fringe Character with a small portion of the site being open valley side. The Council contend that the whole site is more appropriately identified as open valley side.
23. The difference in opinion and identification relates to the influence of the urban settlement boundary, the topography of the site and other landscape features in the surroundings. The fact that the 2017 classification is based on somewhat historic data does call into question the accuracy at the finer grain. There is some evidence in terms of photographs and on site that the site was subdivided and that there may have been different practices implemented which resulted in parts of the site having a different appearance and therefore leading to a different classification at that stage. On site I was firmly of the view that the site was of an open character with little in the way of field boundaries, hedges or other landscape features to different areas of the site.

Whilst there was a break in the slope this was minimal and did not change the characterisation from a gentle slope. There were minor variations across the site and I was not persuaded that this was such a feature that would change the character type of the site. Finally, in the context of the urban settlement edge influence it is undeniable that it is there. There is a lack of screening and there is a harsh and readily visible urban edge. This however is a distinct break with the open rural field which then flows to the open agricultural fields beyond the farmstead cluster and the lower valley floor below. In my view in the wider context the urban influence is given too much weight in the appellant's assessment and in association with the sub division of the site into smaller fields adds to the reduced weight given to the effect of the proposed development.

24. The proposed development would result in the provision of a suburban housing estate of up to 150 units on an open field that would substantively change the character of the field. The field appears, when looking south and east, as part of the broader landscape compartment and part of the Lower Meon Valley landscape. Views back towards the site would result in the perception of the intrusion of housing further into the valley and valley sides to the detriment of the character of the valley. The characteristics of the site are consistent with those of the Meon Valley and representative of the open valley side which includes sloping landform, a lack of woodland with views across the valley floor and is generally pastoral with some intrusive influences of roads or built development.
25. The visual effects of the development would be evident from a number of public footpaths both through and surrounding the appeal site as well as along Posbrook Lane, to the south and from the valley floor and opposite valley side. The further encroachment of built development into the countryside would detract from the rural appearance of the area.
26. The potential for landscaping to screen and reduce the visual effects and to a certain extent provide some positive contribution was advanced by the appellant. Whilst additional landscaping along the proposed urban edge would produce an edge that was more screened and in effect a softer edge than present is undeniable and would of itself improve the appearance of the existing urban edge. However, this needs to be weighed against the loss of the open field separation of elements of built development and the creeping urbanisation of the area. Whilst planting would assist in reducing the direct line of sight of houses in the longer term there would still be effects from noise, activity, illumination in the evening along with the localised views that would inevitably and substantively change.
27. I would characterise the landscape and visual effects as substantial and harmful in the short to medium term, albeit this would reduce in the longer term, I would still view the adverse effect as significant.
28. There is some dispute as to whether the site is a valued landscape. The Lower Meon Valley is a significant landscape feature and both parties assessed the site against the box 5.1 criteria in Guidelines for Landscape and Visual Impact Assessment. In this context it is a reasonable conclusion that both parties accept that the Lower Meon Valley has attributes that are above the ordinary. There is some debate as to whether the appeal site contributes to these or is part of that as a valued landscape. On the basis of the evidence before me I

have no difficulty in accepting that the Lower Meon Valley is a valued landscape in the context of the Framework and this is a conclusion consistent with my colleague in the Old Road decision. From my visit to the site and the evidence presented to me I am of the view that the appeal site shares a number of those attributes including the nature of the rural landscape and topography, its scenic quality and that it is representative of the valley sides character type. The site does form part of the broad visual envelope of the Lower Meon valley and part of the landscape compartment and therefore should be considered as part of the valued landscape.

29. Turning to the issue of the strategic gap. The appeal site is located in the Meon Valley strategic gap. The purpose of the strategic gap as identified in policy CS22 is to prevent development that significantly affects the integrity of the gap and the physical and visual separation of settlements. Whilst the Council sought to broaden this out to include the setting of settlements that is not how the development plan policy or indeed its policy justification is written. This states the gaps help to define and maintain the separate identity of individual settlements and are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green corridors. To go beyond these factors in assessing the development against policy would be introducing tests that are not within the development plan.
30. The proposed scheme would extend the urban edge of Titchfield further into the gap than it presently is. There would however be no perception of coalescence or indeed any visual reduction of the separate settlements (I do not see the cluster of buildings as a separate settlement in this context). There would be no demonstrable reduction in the physical separation and the gap's integrity would not be significantly affected. Whilst there would be a minor outward extension in the context of the settlement pattern and separation of settlements the proposed development would be minor and would not result in a significant effect.
31. Overall for the reasons given above I conclude that the proposed development would result in material harm to the character and appearance of the area. This would result in harm to a valued landscape. There would however be no significant effect on the strategic Meon Gap. Consequently, the proposed development would conflict with policies CS14 and DSP6 which seek to protect the character and appearance of the area of land outside the defined urban settlement boundary but would not conflict with policy CS22.

*Setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II\* listed buildings*

32. South of Titchfield on the east side of Posbrook Lane there is an historic farmstead that includes the listed buildings of Great Posbrook and the southern barn at great Posbrook farm. Both of these are Grade II\* which puts them in the top 8% or so of listed buildings in the Country. They are a significant and invaluable resource.
33. The list description for Great Posbrook identifies it as a C16 house altered in the C19 with evidence of elements of C17 and C18 interior details. There is some question mark over the precise dating of the origins of the building with the Council pointing to evidence that it dates from early C17. While the alterations have created two parallel ranges the earlier T shaped form is unusual and is of particular architectural importance because of its rarity. The

main parties' experts agree that the building is of considerable historic interest due to its fabric, architectural composition and features.

34. The list description for the southern barn identifies it as a late medieval aisled barn. However, the Council point to more recent dendrochronology which indicates that it is likely to be late C16 or early C17 with the eastern end being C18. It is a substantial historic barn with considerable vernacular architectural interest being a good and relatively rare example of a high status English barn. Its size and scale demonstrating its association with a high status farm.
35. The listings make reference to other buildings in the cluster forming the farmstead including a store shed, small barn, cartshed and pigsties but note that these are of local interest only. The main listed buildings together with the buildings of local interest form an early farmstead with a manorial farmhouse, significant barn and numerous other buildings. There have been recent interventions as part of enabling development which resulted in the demolition of modern farm buildings the conversion of some of the historic buildings and the construction of new buildings to provide for additional residential occupation on the site. Much of the new building footprint was related to original buildings in an attempt to reinstate the historic arrangement of farm buildings in a courtyard pattern.
36. The significance of the listed buildings and the farmstead derives from the age, architectural quality, size, scale and relationship of buildings. There is a functional relationship with the adjoining land which was likely farmed as part of the farm holding and reasonable evidence to suggest that there may be an associative link with Titchfield Abbey which adds and contributes to this significance. There has been some more recent and modern infill development and recent housing within the farmstead adjacent and in the wider setting which has a negative impact and detracts from the significance. The wider setting of the site within a rural landscape assists in understanding the scale and status of the land holding, sets the farmstead in an appropriate open rural agricultural setting and separates it from the close by settlement of Titchfield. This contributes to the overall significance of these assets.
37. The proximity of the settlement of Titchfield and the exposed urban edge already have a negative impact on the wider setting of the heritage assets bringing suburban development close to the farmstead and reducing the wider rural hinterland.
38. The appeal site is formed by open land that wraps around the northern and eastern edge of the cluster of buildings within which the farmstead is set. It lies between the southern edge of Titchfield and the northern edge of the cluster of buildings and abuts the northern and eastern boundary of the farmhouse.
39. It is common ground that the proposals would not result in physical alterations to the listed buildings. There would be no loss of historic fabric or alterations to the architectural quality or form of the actual buildings. Similarly there would be no direct alteration of the farmstead.
40. Both parties also agree that the proposal would be located within the setting of the listed buildings and the farmstead. There is also agreement that the proposal would result in harm to the setting of the listed buildings by virtue of built development being closer to the buildings and reducing the rural setting of the buildings. Whilst both parties accept that the harm would be less than

substantial in terms of the Framework, the dispute arises in respect of the level of that harm. The appellant broadly contends that there are limited aspects where the effect would be perceived or experienced and with appropriate landscaping the effect would be reduced over time such that it would fall at the bottom end of the spectrum of less than substantial harm, albeit acknowledging that some harm would be occasioned. The Council on the other hand would put the harm more to the middle of the range that would be less than substantial and contend there are a number of areas where the perception would be significant, that the landscaping may reduce the effect over time, but not remove it, that the noise, activity and illumination associated with a suburban housing estate would further add to that impact and that the effect of changing that land from open rural land to suburban housing would fundamentally alter the setting and obliterate some of the functional and associative links with the adjoining land, albeit different degrees of weight were ascribed to the various elements of harm.

41. There is no dispute that the site would result in the introduction of housing on the area of land adjacent and bordering the farmstead and main farmhouse. This would bring the settlement of Titchfield up to the cluster of buildings and in effect subsume that once separate element into the broader extent of the settlement. This would reduce the connection of the existing farmstead and listed buildings to the rural hinterland and obscure the separation from the nearby settlement. The character of that change would be noticeable and harmful. It would be perceived when travelling along Posbrook Lane when leaving or entering the village and would be readily appreciated from Bellfield and the adjacent existing settlement edge. There are also public footpaths running through the land. These would be both static and kinetic views when moving along and between the various views. This would be a significant and fundamental change.
42. When viewed from the south, along Posbrook Lane and the public footpaths, travelling towards the farmstead and Titchfield the size and scale of the barn are fully appreciated, there are views available of the manorial farmhouse within these views and together the site is recognisable as a distinct farmstead. Whilst the urban edge of Titchfield is also visible it is appreciated that there is a degree of separation. The proposed development would intrude into these views and in the short to medium term would be readily distinguishable as suburban housing. In the longer-term landscaping may reduce this negative effect by the introduction of a woodland feature at its edge, which the appellant argues is reflective of the historic landscape pattern in the area. However, this would introduce a sense of enclosure around the farmstead and listed buildings that would detach them from the rural hinterland and reduce that historic functional connection with the adjoining open land. Whilst there is evidence of small wooded areas in the historic mapping these were freestanding isolated features and not so closely related to areas of built development. The point of the historic pattern in the area is the farmstead with open land around that was once farmed by the manorial farm and which would not have included such features in such proximity to the main farmstead.
43. There would also be views of the relationship between the farmhouse and the proposed development in views on the public paths to the east. Again, these would be significant and harmful in the short to medium term. There may be some reduction in that harm as landscaping matures but even with dense planting and the softening of the existing urban edge it will be an undeniable

fact that suburban development has been undertaken and that there is no separation between the settlement of Titchfield and the historic farmstead including the listed buildings.

44. For the reasons given above I conclude that there would be harm to the setting of the listed buildings and historic farmstead. I would characterise that harm as less than substantial as this would not obliterate the significance of these historic assets. The proposal would however have an adverse and harmful effect on the setting of these assets which would affect their significance given the contribution that the setting makes to that significance. The urbanisation of the remaining area that separates the farmstead and listed buildings from the settlement is significant and whilst the rural hinterland remains to the south and west the dislocation from the existing built up area is an important and fundamental component of that setting that would be lost as a result of the development. The effect is therefore significant and would not in my view be at the lower end of the less than substantial scale as contended by the appellant but more in line with that suggested by the Council. The proposal would therefore conflict with development plan policy DSP5 which seeks the protection and enhancement of heritage assets and is consistent with national policy.
45. These are two Grade II\* listed buildings and the Framework advises that great weight should be given to a designated heritage asset's conservation, any harm should require clear and convincing justification and assets should be conserved in a manner appropriate to their significance. I also have regard to my statutory duty in respect of listed buildings and their setting. The courts have also held that any harm to a listed building or its setting is to be given considerable importance and weight. These matters are reflected in my planning balance below, which includes the Framework's 196 balance.

*Best and Most Versatile Agricultural Land*

46. The appellant undertook a survey of agricultural land and this assessment is provided in appendix SB3 of Mr Brown's proof. This identifies the limited amount of Grade 3a land (4.1 Ha) that would be affected by the development and sets this in the context of Fareham. In my view this does not trigger the sequential test in the Framework footnote 53 as significant development.
47. It is accepted that whilst there is a loss of BMVAL and that this is a negative to be weighed against the scheme it would not of itself amount to such that would justify the dismissal of the appeal. This is a point that was not refuted by the Council who accepted that it may not justify dismissal but should be weighed as a negative factor in the overall balance against the development.
48. I have no substantive evidence to depart from those views and the approach adopted is consistent with that of a colleague in an appeal at Cranleigh Road (APP/A1720/W/16/3156344).
49. The appellant's report concluded that given the grade of land, the small scale and the overall comparative effect on such land in Fareham, whilst it is a negative, it should be afforded no more than limited weight. I concur with that assessment for the views given and therefore ascribe this loss limited weight in my overall planning balance.

## **Other Matters**

50. The Council and appellant agree that the Council cannot demonstrate a 5 year housing land supply. Time was spent at the Inquiry considering the extent of the shortfall based on, amongst other matters, the correct buffer and the correct household projection base date to use. The publication of the Housing Delivery Test results confirmed that Fareham is a 5% buffer Authority. The government also confirmed that it is the 2014 based household projections that should be used as the basis for calculation of the five-year requirement under the standard method. On this basis both parties agree that the minimum five-year requirement would be 2,856 in the period 2018 to 2023.
51. The updated position of the parties is thus a 3.08 years supply taking the appellants position or a 4.36 years supply if the Council's position were to be adopted. I have been provided with further supply evidence in relation to the Old Street Inquiry which calls into question some of the supply side dwellings included in the Council's figures which were permitted since April 2018. Excluding these the appellant suggests the Council's figures would drop to 4.08 years supply.
52. Whichever figures are adopted it is clear that the Council cannot identify a five-year supply of available housing land and that the shortfall is significant. The provision of additional housing in an area where there is a significant housing shortfall in my view translates into a significant positive benefit for the scheme in terms of the overall planning balance.
53. The appeal site is located where there is potential for a significant effect on a number of European designated wildlife sites which comprise Special Areas of Conservation (SACs), Special Protection Areas (SPAs) potential Special Protection Areas (pSPAs) and Ramsar sites. The proposal has been subject to Habitats Regulation Assessment and a shadow Appropriate Assessment process by the appellant. Given the requirement for further publication of environmental information in association with the Environmental Statement consultation was undertaken with Natural England as the Nature Conservation Body to ensure there was no further procedural or administrative delay at the end of the process. However, given the conclusion of my assessment of the effect of the development on the wider landscape and the designated heritage assets I am not minded to allow the appeal. On this basis an Appropriate Assessment does not need to be carried out, as it is only in circumstances where I am minded to grant consent that such an assessment is required to be undertaken. Moreover, in the interim the Framework, paragraph 177 has been amended to advise that it is not the requirement to conduct Appropriate Assessment but the conclusion that following that assessment there is an identified likely significant effect on a habitats site where the presumption in favour of sustainable development does not apply. In these circumstances this matter does not therefore affect the approach to my planning balance.

## **Benefits of the Scheme**

54. As noted above the provision of housing in an Authority area where the Council cannot identify a five-year housing supply is a significant benefit of the scheme. The Statement of Common Ground signed by the parties makes it clear that there is a significant need for affordable housing. The provision of 40% of the total number of units provided as affordable housing, secured

through the planning obligation, is therefore also a significant positive benefit of the scheme.

55. The appellant contends that there would be between 360 and 465 direct, indirect and induced jobs created by construction. It is further contended that there would be an on-going £4.1m gross expenditure per annum from future residents. It is further contended that the landscaping and ecological mitigation would improve the appearance of the harsh urban edge currently created by Bellfield. These are benefits that accrue from this development and are therefore reasonable to add as positive contributions in the planning balance. They are of a scale which reflects the scale of the development.
56. For these reasons the social benefits from additional housing and affordable housing are of significant positive weight, the economic benefits are of moderate positive weight, and the environmental benefits are of limited positive weight.

### **Planning Obligation**

57. A completed Unilateral Undertaking (UU) dated 8 November was submitted to the Inquiry before the conclusion of it sitting. The UU secures matters related to transport including the site access, travel plan and construction traffic management as well as a contribution towards sustainable transport. The UU also secures public open space provisions, including contributions; environmental and habitat obligations, including commuted maintenance and disturbance contributions and the transfer of a bird conservation area; an education contribution and obligations to protect or provide on site routes for the public. These are in effect mitigation measures or matters directly related to the development and do not amount to positive benefits.
58. The appeal is to be dismissed on other substantive issues and whilst an obligation has been submitted, it is not necessary for me to look at it in detail, given that the proposal is unacceptable for other reasons, except insofar as it addresses affordable housing.
59. In respect of affordable housing the UU secures 40% of the housing as affordable units with the mix, tenure and location controlled by the undertaking. I have already identified this as a benefit of the scheme which will be taken into account in the planning balance.

### **Planning balance**

60. I have concluded that the proposed development would result in material harm to the significance of two Grade II\* listed buildings through development in the setting of those buildings. This harm is in my view less than substantial harm in the terms of the Framework a position also adopted by both main parties. Paragraph 196 of the Framework advises in such circumstances that this should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.
61. I have identified the public benefits of the scheme above and these include the provision of additional housing in an authority where there is not a five year supply of housing land and the provision of affordable housing in an area where there is a significant need. I give these matters significant weight. Added to these would be the additional jobs and expenditure in the locality arising from construction activity and following completion of the development. Given the

scale of development these would not amount to small figures and I have ascribed this moderate weight. The proposed landscaping and biodiversity enhancements are a balance and required in the context of also providing a degree of mitigation I therefore only ascribe these limited positive weight.

62. The Framework makes it clear that when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Furthermore it advises that any harm to the significance of a designated heritage asset should require clear and convincing justification. There is a statutory duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. The courts have interpreted this to mean that considerable importance and weight must be given to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise in planning decisions.
63. Heritage assets are an irreplaceable resource and they should be conserved in a manner appropriate to their significance. The Farm House and Barn at Great Posbrook are both Grade II\* and therefore are assets of the highest significance. The development of a substantial housing estate in the rural setting of these listed buildings, and farmstead of which they form part, would materially alter the relationship of the listed buildings and farmstead to the nearby village and wider rural hinterland. This would merge the existing distinct and separated grouping of buildings with the expanding village removing that degree of separation and obscuring the historic relationship with the village and wider countryside. I would not characterise this less than substantial harm as of such limited effect as 'at the lower end' within that spectrum as suggested by the appellant. Indeed, the setting contributes to the significance of these listed buildings and their appreciation from both distinct view points and kinetic views. The negative effect would have a measurable and noticeable effect on the existing physical relationships of development in the area and thereby the understanding of the historic development of those over time. The understanding of the high status nature of the house and barn, and their significance, is derived in part from an appreciation of the separation from the village, their setting within the wider agricultural and rural hinterland as well as their size, scale, architectural quality and relationship of the buildings to each other and the surrounding development.
64. On the basis of the above I conclude that the less than substantial harm I have identified, and to which I give considerable importance and weight, is not outweighed by the significant public benefits of the scheme. On this basis I conclude that the scheme should be resisted. As the scheme fails the paragraph 196 test this would disengage the paragraph 11 d tilted balance that would otherwise have been in play given the lack of a five-year supply of housing land.
65. The scheme would be subject to the requirement to carry out an Appropriate Assessment under the Habitats Regulations if I were minded to allow the appeal. At the time of submission of the appeal Paragraph 177 of the Framework required that the presumption in favour of sustainable development, in paragraph 11, would not apply where an Appropriate Assessment was required to be carried out. The latest iteration of the Framework has amended paragraph 177 to only disengage the presumption in favour of sustainable development where the development is likely to have a

significant effect on a habitats site. If an Appropriate Assessment has concluded the development would not adversely affect the integrity of the habitats site the presumption would not be disengaged. However, given my conclusions in respect of the impact on heritage assets and the other harms I have identified I am not minded to allow the appeal and therefore I do not need to carry out an Appropriate Assessment.

66. Whilst the presumption in favour of sustainable development is not disengaged by virtue of paragraph 177 of the Framework, paragraph 11 d, the so called 'tilted balance', is disengaged by virtue of my conclusions in relation to the effect on the heritage assets and the application of 11 d i. The proposal therefore is to be considered in the context of a straight balance. Section 38(6) requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposal would result in material harm to the character and appearance of the area, which is a valued landscape, to the setting of two Grade II\* listed buildings and a minor adverse effect on best and most versatile agricultural land in the area. On this basis the proposal would conflict with policy CS14 in the LPP1 and DSP5, DSP6 and DSP40 in the LPP2.
67. The Authority cannot demonstrate a 5 year supply of housing land and policies which restrict housing development through such matters as settlement boundaries and gaps are out of date. They do not provide for the necessary housing to make provision for adequate housing in the area. However, those policies, which include CS14, CS22 and DSP6 do seek to protect the countryside and fulfil a purpose that is consistent with the Framework. The Council is seeking to address the shortfall and is making positive steps in that regard albeit there is dispute as to how successful that is. Nevertheless matters are moving forward and although there is still an outstanding shortfall, which even if I accept is as great as suggested by the appellant, is improving on historic figures and there appears to be greater opportunities for this situation to be improved further. I accept that Welbourne may well not be moving at the pace that has previously been suggested and not as quickly as the Council would suggest, but it is still moving forward and with a significant complex development of this nature matters will take time but once milestones are reached momentum is likely to quicken. Of particular relevance here is the determination of the extant application, which remains undetermined but continues to move forward. On the basis of the information before me the determination of this would be in the spring or middle of this year. Given the above I do not afford these particular policies the full weight of the development plan but I still accept that they have significant weight and the conflict with those policies that I have identified above still attracts significant weight in my planning balance.
68. I note that policy DSP5 reiterates national policy and reflects the statutory duty and is therefore accorded full weight and conflict with it, as I have found in this regard, is afforded substantial weight. 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. In the context of the harms I have identified which relate to landscape, heritage assets and best and most versatile agricultural land these result in conflicts with specific criteria in policy DSP40 for the reasons given above in respect of those matters and therefore there is conflict with the policy. These

are two significant policies where weight has not been reduced and the proposal when considered in the round is not in accordance with the development plan taken as a whole.

69. The ecological provisions payments and additional bird sanctuary are primarily mitigation requirements resultant from the proposed development and its likely potential effects and do not therefore substantively add a positive contribution to the overall balance.
70. The impact on the significance of the Grade II\* listed buildings is not outweighed by the public benefits of the scheme and therefore the additional harms related to landscape and BMVAL only add further to the weight against the proposal. The advice in the Framework supports the conclusions to resist the proposal. There are therefore no material considerations that indicate that a decision other than in accordance with the development plan would be appropriate.

**Overall conclusion**

71. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR



DOCUMENTS SUBMITTED AT INQUIRY BY APPELLANT

- APP1 Housing Land Supply Statement of Common Ground.
- APP2 Press Release dated 18 October 2018 from Fareham Borough Council.
- APP3 Appeal Decision letter APP/W3520/W/18/3194926.
- APP4 Habitats Regulations Assessment Screening & Shadow Appropriate Assessment prepared by CSA Environmental.
- APP5 Unilateral Undertaking dated 8 November 2018.
- APP6 Bundle of three Committee reports (P/17/1317/OA, P/18/0235/FP and P/18/0484/FP) confirming the Council's approach to Policy DSP40.
- APP7 Additional suggested conditions.
- APP8 Letter from Hampshire and Isle of Wight Wildlife Trust confirming their agreement to take on the land secured as the Bird Conservation Area in the Unilateral Undertaking.
- APP9 Closing submissions on behalf of the appellant.

DOCUMENTS SUBMITTED AT INQUIRY BY LOCAL PLANNING AUTHORITY

- LPA1 List of Appearances on behalf of the Council
- LPA2 Updated extract from 'The Buildings of England Hampshire: South', appendix 14b to Ms Markham's proof of evidence.
- LPA3 Conservation Area Appraisal and Management Strategy: Titchfield Abbey, Fareham Borough Council adopted sept 2013 – substitution for Core Document F11.
- LPA4 Appeal Decision letter APP/W1715/W/17/3173253.
- LPA5 Copy of Policies 1CO and 2CO from the Eastleigh Borough Local Plan.
- LPA6 Announcement from the Leader of Fareham Borough Council dated 5 November 2018.
- LPA7 S106 Obligations Justification Statement.
- LPA8 Opening submissions on behalf of the Council.
- LPA9 List of documents to be referred to during Evidence in Chief of Philip Brshaw.
- LPA10 List of documents to be referred to during Evidence in Chief of Lucy Markham.
- LPA11 Draft schedule of conditions.
- LPA12 e-mail from Strategic Development Officer Children's Services Department Hampshire County Council dated 8 November 2018.
- LPA13 Plan of route and points from which to view the site during the appeal site visit.
- LPA14 Closing submissions on behalf of the appellant.

DOCUMENTS SUBMITTED AT INQUIRY BY TITCHFIELD NEIGHBOURHOOD FORUM

- TNF1 Opening statement on behalf of Titchfield neighbourhood Forum
- TNF2 Email exchange with appellant regarding drainage dated 6 November including various attachments
- TNF3 List of documents referred to in Evidence in Chief of Mr Phelan
- TNF4 Closing Statement on behalf of Titchfeild neighbourhood Forum

DOCUMENTS SUBMITTED AT INQUIRY BY THIRD PARTIES

INQ1 Speaking note from Mr Girdler  
INQ2 Letter read out by Mr Marshal on behalf of The Fareham Society  
INQ3 Speaking note from Mr Hutcinson

DOCUMENTS SUBMITTED AFTER INQUIRY

PID1 Additional Environmental Information submitted by appellant under cover of letter dated 14 December 2018.  
PID2 Copy of Press notice of publication of Additional Environmental Information.  
PID3 Comments on Additional Environmental Information by Titchfield neighbourhood Forum.  
PID4 Comments on Additional Environmental Information by Fareham Borough Council.  
PID5 'Old Street' Appeal decision APP/A1720/W/18/3200409 submitted by Fareham Borough Council  
PID6 Fareham Borough Council comments on 'Old Street' decision.  
PID7 Appellant's comments on 'Old Street' decision.  
PID8 Natural England's (NE) consultation response on shadow Habitats Regulation Assessment as Statutory nature Conservation Body.  
PID9 Appellant's response to NE's consultation response (PID8) including an updated shadow Habitats Regulation Assessment.  
PID10 Titchfield neighbourhood Forum's response to NE's consultation response (PID8)  
PID11 Titchfield Neighbourhood Forum's comments on the Housing Delivery Test (HDT) results and the changes to the National Planning Policy Framework (the Framework).  
PID12 Fareham Borough Council's comments on the HDT results and the changes to the Framework.  
PID13 Appellant's comments on the HDT results and the changes to the Framework.  
PID14 Titchfield Neighbourhood Forum's final comments on HDT and Framework  
PID15 Appellant's final comments on HDT and Framework.

END



## Appeal Decision

Inquiry Held on 24 to 26 September 2019

Site visits made on 23, 25 and 26 September 2019

**by Grahame Gould BA MPhil MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 5 November 2019**

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**Appeal Ref: APP/A1720/W/19/3230015**

**Land to the east of Downend Road Portchester**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Miller Homes against the decision of Fareham Borough Council.
  - The application Ref P/18/0005/OA, dated 2 January 2018, was refused by notice dated 26 April 2019.
  - The development proposed is described as 'Outline planning application with all matters reserved (except the means of access) for residential development, demolition of existing agricultural buildings and the construction of new buildings providing up to 350 dwellings; the creation of new vehicular access with footways and cycleways; provision of landscaped communal amenity space, including children's play space; creation of public open space; together with associated highways, landscaping, drainage and utilities'.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Miller Homes against Fareham Borough Council. That application is the subject of a separate Decision that will follow the appeal decision.

### Preliminary Matters

3. The Inquiry sat for three days between 24 to 26 September 2019. I made what the Planning Inspectorate refers to as an 'access required' visit to the site on 25 September when I was granted access to enter and view the site, rather than being accompanied by representatives for the appellant and the Council. I also made unaccompanied visits to the area within the vicinity of the appeal site on 23 and 26 September.
4. While the Inquiry finished sitting on 26 September, I adjourned it, as opposed to closing it to allow for the submission of: a certified copy of an executed Section 106 agreement (S106); the appellant's and the Council's closing submission in writing; some documents referred to by the parties in evidence (inquiry documents [IDs]); a final version of the inquiry position statement; and the appellant's written application for costs and the Council's response to that application. The Inquiry was closed in writing on 21 October 2019.

5. The S106 was received by the Planning Inspectorate on 3 October 2019 and it contains planning obligations concerning:
- the provision of 40% affordable housing within the development;
  - the implementation of improvements to the Cams bridge;
  - the undertaking of off-site highway works for alterations at the railway bridge in Downend Road and on the A27;
  - the payment of contributions for various off-site highway and transportation improvements and the implementation of an occupiers travel plan;
  - the provision of and the payment of maintenance contributions for public open and play space;
  - the payment of a contribution to mitigate the development's effects on off-site designated habitats; and
  - the payment of a contribution for school facilities in the area.

### **Main Issues**

6. The main issues are:
- whether the development would make adequate provision for pedestrian access via Downend Road and the effects of providing pedestrian access on the operation of Downend Road;
  - whether there would be accessibility to local services and facilities for the occupiers of the development by a range of modes of transport; and
  - the effects of the development on the integrity of the Portsmouth Harbour Special Protection Area and Ramsar Site, the Solent and Southampton Special Protection Area and Ramsar site and the Solent and Dorset Coastal Potential Special Protection Area (the designated habitats).

### **Reasons**

#### *Pedestrian access via Downend Road and effects on the operation of Downend Road*

7. Having regard to the wording of part a) of the reason for refusal, ie pedestrian use of Downend Road and any subsequent implications for the 'safety' of and 'convenience' of users of this road, and the evidence put to me, there are various matters that come within the scope of the consideration of this main issue. Those matters, which I consider below in turn, being: the pedestrian routes that would be available to occupiers of the development; the pedestrian demand (movements) and the distribution of those movements amongst the pedestrian routes; and the options for and effects of altering the railway bridge in Downend Road to accommodate the pedestrian movements arising from the development.
8. Inevitably there is some overlap between the matters of pedestrian movements and their distribution to be consider under this issue and the

wider accessibility to services and facilities that concerns the second main issue that I have identified.

Proposed pedestrian routes

9. The development would involve the construction of 350 dwellings to the north of a railway line, just beyond part of Portchester's established residential area. The development would have three pedestrian routes to and from it and they would be via: Downend Road, the westernmost of the routes (route A); Cams bridge, the central route (route B); and Upper Cornaway Lane, the easternmost route (route C).
10. Cams bridge crosses the railway line and currently provides access between the site and a small vehicle repair garage and The Thicket, the latter being a residential street. Separately planning permission has been granted for upgrading works to the Cams bridge to facilitate its use as a pedestrian route for occupiers of the appeal development. On the southern side of Cams bridge there is a tarmacked track leading off The Thicket. With the upgrading of Cams bridge route B would be a pedestrian route of an essentially urban character.
11. Route C would in part be reliant on the use of an unsurfaced, one metre wide and 200 metre or so length of a public right of way (footpath PF117), and Upper Cornaway Lane, a street providing access to the crematorium and some chalet type homes. Given the rural character of FP117 and its current suitability only for recreational use, some widening and surfacing works would be undertaken to it to enable it to be used more easily by residents of the proposed development.
12. Downend Road can be characterised as being a local distributor road<sup>1</sup>, with a two-way, daily flow of the order of 6,800 vehicles per day<sup>2</sup>. Pedestrians using route A and travelling to and from destinations south of the railway line would have to cross the railway bridge in Downend Road, following some alterations to the bridge being made, which are referred to in more detail below. That railway bridge has variously been described as providing a north/south or east/west crossing of the railway line and I shall hereafter only refer to it as an east/west crossing of the railway line and to drivers making eastbound or westbound crossings of the bridge. On the railway bridge and westbound of it, as far as the junction with the A27, Downend Road is subject to a 30mph speed limit. Immediately eastbound of the railway bridge the speed limit increases to 40mph.
13. In terms of accessing places of work and education, shopping and leisure facilities, public transport (Portchester railway station and bus stops along Portchester Road [A27]) and other services and facilities etc, it is agreed that some occupiers of the development would walk to and from the previously mentioned destinations. However, there is disagreement about the scale of the pedestrian demand and how it would be distributed amongst the three routes.

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<sup>1</sup> Paragraph 6.24 of Mrs Lamont's PoE

<sup>2</sup> Table 2.1 within Mr Wall's proof of evidence and paragraph 41 of Mr Litton's closing submissions for the appellant (ID21)

The pedestrian demand (movements) and the distribution of those movements

14. The appellant's most up to date estimate of the total daily pedestrian demand generated by the development would be nearly 700 movements per day, inclusive of walking trips to access buses and trains, 26.6% or so of all daily trips arising from the development<sup>3</sup>. By contrast the Council estimates that the number of daily single mode walking trips would be of the order of 284 trips, ie origin to destination trips excluding the use of buses or trains (CD10A). The parties agree for the purposes of estimating the development's pedestrian demand that data from the national travel survey 2018 (NTS2018) should be used to establish all trip generation, mode share and journey purpose. It is further agreed that the 2011 Census data should be used to determine the development's population.
15. However, there is disagreement between the appellant's and the Council's transportation witnesses<sup>4</sup> as to what flexibility should be used in applying the acceptable walking distance guidance stated by the Chartered Institution of Highways and Transportation (CIHT) in its guidelines for the 'Provision for journeys on foot' (CIHT2000 [CD25]). There is also a difference of opinion as to whether the mode share for walking to work recorded by the Census, ie 52% of the national level, should be used as a proxy when considering the propensity for all walking trips arising from the development. The consequence of those disagreements being whether local places of work, schools, shopping facilities etc would or would not be within walking range of the development, having regard to the alternatives offered by the three routes.
16. Mr Wall for the appellant is of the view that the suggested acceptable walking distances set out in Table 3.2 of CIHT2000 are dated and are being too rigidly applied by Mrs Lamont for the Council. The guidelines set out Table 3.2 are:

	Town centres (metres)	Commuting/school and sightseeing (metres)	Elsewhere (metres)
Desirable	200	500	400
Acceptable	400	1,000	800
Preferred Maximum	800	2,000	1,200

17. While it has been suggested that the acceptable walking distance guidelines stated in CIHT2000 are dated, given that they are nearly 20 years old, that concern does not seem to be borne out by the information contained within Table NTS0303 contained within NTS2018<sup>5</sup>. That is because between 2002 and 2018 the average walking trip length has remained constant at 0.7 miles (1.12 Km), while walking trips over a mile (1.6 Km) have consistently been of an average length of around 1.4 miles (2.25 km). Those national survey results suggest that individuals' attitudes towards walking trip

<sup>3</sup> Page 2 of CD10A and Paragraph 2.3.9b of Mr Wall's PoE

<sup>4</sup> Mr Wall for the appellant and Mrs Lamont for the Council

<sup>5</sup> Page 4 Appendix 1 of Mrs Lamont's PoE

lengths have not altered appreciably and that there is no particular issue with the currency of the guidance contained in Table 3.2 of CIHT2000.

18. In any event were the guidelines stated in CIHT2000 thought to be out of date, then I would have expected the CIHT to have revised them, either by issuing an amended version of CIHT2000 or publishing an entirely new document. Neither of those courses of action have been initiated by CIHT, with the publication of its 'Planning for Walking' guidance in 2015 (CD27 – CIHT2015) appearing to have provided an obvious opportunity for replacement acceptable walking distance guidelines to have been introduced. Instead CIHT2015 makes cross references to CIHT2000 in sections 4 and 6, which I consider to be a strong indication that CIHT was of the view that irrespective of the age of its acceptable walking guidelines, they continued to have currency. Mr Wall in giving his oral evidence stated that he was unaware of the CIHT undertaking any current review of CIHT2000.
19. Regardless of a walking trip's purpose the appellant contends that an upper ceiling distance of 2.4 Km (1.5miles) should be used. However, setting such a distance is inconsistent with what is stated in CIHT2000 and the average walking trip lengths reported in the NTS2018 and I therefore consider it should be treated with some caution. The wider disagreement about the overall number of pedestrian movements that would be generated is something I shall return to in providing my reasoning for the second main issue. However, in the context of the consideration of the utility of route A, I consider that the walking trips of most significance would be those to and from Cams Hill Secondary School (the school) and the Cams Hall employment site (CHes). That is because the school and the CHes would or would very nearly meet the 2,000 metre preferred maximum distance guideline for walking journeys for schools and commuting stated in CIHT2000.
20. As it is highly unlikely that route C would be used to get to or from either the school or the CHes, there is no need for me to make any further reference to it in considering this main issue.
21. The parties are now agreed that the development would generate 35 or 36 pedestrian crossings of the Downend Road bridge per day, an increase of between 83% and 86% on the present situation<sup>6</sup>. Of the new crossings there is agreement that 24 would be for the purpose of travelling to and from the school. However, unlike the Council, the appellant contends that no use of route A would be made by commuters walking to or from a place of work<sup>7</sup>.
22. There is some disagreement as to whether the CHes would be 2,000 or 2,100 metres from the development. I consider that a 100 metre (5%) difference would not act as a significant deterrent for pedestrians using route A. That is because the time to walk an extra 100 metres would not be great and for a walker using either routes A or B and it would probably be necessary to time the duration of the alternative walking trips to be aware of any meaningful difference between them. Having walked routes A and B, and presuming that a safe pedestrian crossing for the Downend Road railway bridge would be available, I consider that qualitatively there would be very little to differentiate route A from B. I also consider there would be potential

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<sup>6</sup> Page 5 of CD10A

<sup>7</sup> In the zero entry against commuting/business trips in the upper table and supporting text on page 3 of CD10A and in Tables 10 and 11 included in Appendix C to Mr Wall's PoE

for commuters walking between the development and the CHes to vary their routes, to avoid monotony, and to use either route A or B. I am therefore not persuaded that route B would automatically be favoured ahead of route A by those walking to and from the CHes.

23. So, unlike the appellant, I consider it incorrect to discount commuters from walking to or from CHes via route A. I therefore consider that there would be potential for more pedestrian use of Downend Road railway bridge than has been allowed for by the appellant. I also consider that as there is access to the circular countryside public footpath route just beyond the railway bridge that there would be potential for additional recreational walkers, originating from the existing built up area, to be drawn to Downend Road resulting in some additional crossings of the bridge. That is because the provision of enhanced pedestrian facilities would make it safer to cross the bridge and the bridge's existing condition may well be acting as a detractor for recreational walkers.

The five options considered at the application stage for altering the Downend Road railway bridge

24. To accommodate additional pedestrian crossings of the railway bridge in Downend Road there is no dispute that alterations would need to be made to this bridge. That is because the existing bridge only provides a very rudimentary refuge for pedestrians, in the form of a very narrow margin, tantamount to a 'virtual footway', that comprises a strip of tarmac demarcated by a white painted line.
25. To address the additional demand for pedestrian crossings of the bridge the appellant when the appealed application was originally submitted put forward three options for alterations (options 1 to 3). Option 1 would involve the introduction of a formalised virtual footway and has been discounted by Hampshire County Council (HCC). Option 2 would involve the provision of a 1.2 metre wide traditional (raised) footway, with a carriageway width of around 4.8 metres. Option 3 would involve the provision of a 2.0 metre wide footway and a reduction in the width of the carriageway to form a single lane of 3.5 metres and would involve the introduction of a shuttle working arrangement, with the signed priority being in favour of the eastbound stream of traffic. HCC in offering its advice to the Council<sup>8</sup> expressed no preference for either options 2 or 3, with it stating that the final decision on which option should be pursued being deferred until a post planning permission public consultation exercise had been completed.
26. Following the decision of the Council's planning committee to defer the determination of the appealed application in order to enable further consideration to be given to the alteration of the railway bridge, two further options were put forward by the appellant. The first of those, option 4, would be similar to option 3, albeit than in substitution for signed priority vehicles would be controlled by traffic signals. HCC are reported as raising no in principle concern with option 4, albeit it indicated that this option would entail greater driver delay, including unnecessarily during off peak periods, and a maintenance liability, such that options 2 and 3 remained preferable to the highway authority<sup>9</sup>.

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<sup>8</sup> Letter of 29 August 2018 (contained within CD2)

<sup>9</sup> Paragraph 3.2.6 in the i-Transport Technical Note of 28 February 2019 and entitled 'Downend Road Railway Bridge – Review of Pedestrian Options' (CD29)

27. Option 5 would involve no footway provision, with the carriageway available to vehicles crossing the bridge travelling in opposite directions at the same time being 5.0 metres. There would also be 300mm wide margins to protect the parapets on each side of the bridge<sup>10</sup>. Additionally, traffic signals would be installed so that when pedestrians sought to make a bridge crossing they would initiate an all red phase for both eastbound and westbound drivers, making the bridge a pedestrian only area for so long as pedestrians were crossing it. HCC are reported as considering option 5 to be a unique and unsafe means for controlling shuttle working at the bridge and rejected it (CD2<sup>11</sup>). However, HCC's advice to the Council concerning Option 5 appears to have been on the basis that it would involve shuttle working, as opposed to two way working. In this regard HCC is reported as commenting:

*'As such drivers unfamiliar with the site may not expect opposing vehicles to be on the bridge at the same time (both directions on a green signal). This situation is exacerbated by the carriageway width on the bridge which in this controlled situation would encourage drivers to take a more central position in the carriageway. Consequently vehicles may meet each other on the bridge'.* (Appendix 2 of committee report of 24 April 2019 [CD2])

However, HCC's comments regarding option 5 appear to have been made on an erroneous basis, with it having put forward as an alternative to shuttle working. It is therefore unclear what HCC's views on option 5 would have been had it not been treated as being an 'unconventional arrangement'<sup>12</sup>, given its apparent misunderstanding about what this option would entail. It would also appear that the appellant did nothing to bring this misunderstanding to HCC's attention.

28. The Council's determination of the planning application was therefore based on options 2 and 3 being for its consideration and it contends that option 2 would be unsafe for pedestrians, while option 3 scheme would unacceptably affect the safety and convenience of road users. I now turn to the detailed consideration of options 2 and 3.

#### Option 2

29. The railway bridge provides poor facilities for pedestrians crossing it. I recognise that in general terms the provision of a 1.2 metre wide footway on the Downend Road bridge under option 2 would represent an improvement in safety terms compared with the prevailing situation, however, I consider that cannot reasonably be said of the post development situation. That is because the development would be a significant new generator of vehicles crossing the bridge, with the parties agreeing that the development would give rise to a 22% increase in traffic flows on the bridge<sup>13</sup>. Those extra bridge crossings is something that needs to be accounted for when considering whether option 2 would provide a safe environment for the existing and prospective pedestrian users of the bridge.

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<sup>10</sup> As clearly depicted in the cross section contained in Image 3.2 and drawing ITB12212-GA contained in CD29

<sup>11</sup> The summary of HCC's comments to the Council included as Appendix 2 of the Council's committee report of 24 April 2019

<sup>12</sup> Paragraph 3.3.6 in CD29

<sup>13</sup> Page 5 of CD10A

30. I am of the view that a 1.2 metre wide footway under option 2 would not provide a safe bridge crossing facility for pedestrians, having regard to both the increases in vehicular and pedestrian crossings of the bridge, with the development being a new origin/destination for both categories of travellers, particularly during the peak hours for the making of commuting trips and/or school journeys. It is also likely that the pedestrians using the bridge would be likely to be a mixture of adults and school aged children. Given that the demand for additional bridge crossings would largely come from commuters and school children, I consider that activity would be more likely to coincide with AM and PM peaks and would not be evenly spread throughout the day. In saying that I recognise that working hours can be staggered and out of teaching hours' activities occur at schools, but those activities would only give rise to some walking trips for occupiers of the development outside the core peak hours.
31. Having regard to the guidance on footway widths stated in the Department for Transport LTN1/04 'Policy, Planning and Design for Walking and Cycling'<sup>14</sup> and Manual for Streets (MfS - CD23), a footway of 1.2 metres width would be considerably narrower than the generally preferred minimum 2.0 metres referred to in paragraph 6.3.22 of MfS. While the guidance is not expressed in absolute terms the footway to be provided as part of option 2 would potentially be used by a variety of pedestrians, ie adults, children, with or without any impairment. However, a footway of 1.2 metres in width would only just be wide enough for an adult and a child to walk side by side, but would not accommodate two adults with a push chair walking side by side in the same direction or an adult and a wheelchair user side by side, based on the details provided in figure 6.8 of MfS.
32. Regard also needs to be paid to pedestrians travelling in opposite directions wishing to cross the bridge at the same time. In that regard I recognise that as far as pedestrians travelling from or to the development in the peak hours are concerned the bulk of those users would be travelling in the same direction and that this demand for the footway's use would not generate opposing movements. However, there are already users of the bridge and many of them will be making trips across the bridge in the opposite direction to pedestrians leaving or returning to the development. There would therefore be potential for opposing crossings of the bridge to be made at the same time, creating a conflict situation. I consider it cannot be assumed that when directional conflicts arose that one party would give way to the other and with such a narrow footway that would make the use of the carriageway a possibility, bringing pedestrians into conflict with vehicles.
33. Under the prevailing situation, I observed cars frequently encroaching beyond the centre line on the bridge whether there were or were not any pedestrians on the bridge. My seeing cars crossing over the centre line irrespective of whether pedestrians are crossing the bridge is also consistent with the screenshot images included in the appellant's evidence, for example those in appendix A of the appellant's Technical Note of 28 February 2019. All of which is also consistent with the advisory road signs on either side of the bridge warning of oncoming vehicles being in the middle of the road.

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<sup>14</sup> Appendix X to Mr Wall's PoE

34. I therefore find difficult to envisage how that driver behaviour would not continue to be replicated with an increased number of vehicular crossings of the bridge, following a reduction in the carriageway width for vehicles under option 2. That in turn could result in eastbound vehicles needing to mount the footway or their nearside wing mirrors encroaching into the space above the footway. So, under a scenario of vehicles crossing in opposing directions at the same time as pedestrians were also making use of the bridge there would be the potential for the safety of pedestrians to be unacceptably prejudiced.
35. The appellant has sought to justify the provision of a 1.2 metre wide footway, on the basis of having undertaken a 'Fruin' assessment, to judge the level of service this footway would afford its users. However, the extract of the paper written by Mr Fruin submitted at the inquiry (ID5<sup>15</sup>) refers to 'channel's (footways) upwards of 1.8 metres (6 feet) in width having been assessed. I therefore consider that the Fruin methodology has very limited applicability to a footway under option 2 that would be two thirds of the width of the footway referred to in ID5. I therefore find this aspect of the appellant's case does not justify the provision of a 1.2 metre wide footway.
36. While other instances of narrow footways at bridges/archways in Hampshire have been drawn to my attention in evidence<sup>16</sup>. However, those examples do not appear to be directly comparable with the appeal proposals and in any event it is the acceptability of otherwise of the latter that I need to consider.
37. I also find it surprising that HCC considers a 1.2 metre wide footway would be appropriate on a road subject to around 6,750 daily vehicle movements, when the appellant is intending the main and secondary estate roads within the development would have 2.0 metre footways<sup>17</sup>.
38. I therefore consider that option 2 should be discounted as an appropriate alteration to the Downend Road railway bridge for safely accommodating the additional pedestrian use of the bridge that would arise from the development.

### Option 3

39. The appellant's modelling of the effect of option 3's operation traffic flows is heavily reliant on the use of the 'ARCADY' software, that software normally being used to assess the operation of roundabouts. In this instance ARCADY has been set up with a 'dummy arm' as a work around to simulate the operation of eastbound priority shuttle working at the railway bridge. Using ARCADY, the appellant has estimated that in the AM peak hour, the average queue length would be 3.3 vehicles amounting to a delay of 23 seconds<sup>18</sup>.
40. I have never previously come across ARCADY being used for any purpose other than modelling the operation of roundabouts. I therefore find it surprising that HCC, in providing its comments to the Council (included in CD2), did not question ARCADY's use in assessing the operation of shuttle working at a bridge. I consider it unsurprising that the Transport Research Laboratory (TRL), as the developers/product owner of ARCADY, has cast significant doubt on the suitability of its model for assessing a scenario such

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<sup>15</sup> Designing for pedestrians a level of service concept

<sup>16</sup> Appendix X of Mr Wall's PoE and ID11

<sup>17</sup> Paragraph 2.4.2 of the Transport Assessment (CD15)

<sup>18</sup> Page 9 of CD10A

as option 3 because of an issue of dealing with `... the lag times once a vehicle is in the narrowing ...'<sup>19</sup>. So, while HCC appears to have voiced no concerns about ARCADY's suitability, I consider that very little weight should be attached to it for the purposes of assessing the effect of option 3 on the safe and free operation of Downend Road. I also consider it of note that TRL has stated that its PICADY modelling tool, which is designed to model the operation of priority junctions, is also unsuitable for modelling option 3, with TRL referring to its TRANSYT traffic signal software as being more suitable<sup>20</sup>, albeit still something of a work around.

41. In response to the limitations of the appellant's modelling of option 3, the Council has used microsimulation software to assess the operational effects of option 3. That software 'Paramics Discovery Version 22' (PDV22) being a microsimulation model that includes a module, introduced around six months ago<sup>21</sup>, and which has a specific module capable of modelling road narrowings<sup>22</sup>. As a worst case the Council's running of PDV22 predicts that during the AM peak period queues of up to 36 vehicles might extend back from the westbound vehicle give way point and result in westbound traffic being delayed by up to 17 minutes<sup>23</sup>.
42. Given the recent introduction of PDV22 its track record is limited and the appellant has raised concerns about the reliability of PDV22. In that regard it has been argued that the Council's running of PDV22 has not been correctly calibrated for the circumstances of option 3 and that its output results cannot be validated. Mr Wall in cross examination contended that PDV22 appears to have been developed without being informed by driver behaviour. However, producing a model that was incapable of replicating driver behaviour would seem a nonsensical exercise for the product supplier. Given that PDV22 has been developed to assess the operation of a highway under the circumstances of vehicles in one flow giving way to an opposing flow of vehicles at a road narrowing, I consider that very little weight should be attached to the proposition that this software had been developed without regard to driver behaviour.
43. Mr Wall is not a 'modelling expert'<sup>24</sup> and has placed some reliance on the findings of a study undertaken by the TRL for the Department of Transport to support his use of ARCADY and to critique the Council's running of PDV22. The findings of the TRL study were reported in 1982 in a paper entitled 'The control of shuttle working on narrow bridges' (TRL712)<sup>25</sup>. To assist with critiquing the running of PDV22 the appellant has engaged a consultancy specialising in microsimulation modelling, Vectos Microsim Limited (Vectos), and a video file of the model runs Vectos has performed, as well as written advice it has given to the appellant, has been submitted as part of the appellant's evidence<sup>26</sup>. In response to the critique of PDV22 the Council has supplemented its evidence through the submission of a video file for its

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<sup>19</sup> Email from Jim Binning of TRL to Mayer Brown of 23 August 2019, included in Appendix RVL4 appended to Mrs Lamont's rebuttal statement

<sup>20</sup> Email from Jim Binning of TRL to Mayer Brown of 9 August 2019, included in Appendix RVL4 appended to Mrs Lamont's rebuttal statement

<sup>21</sup> Mrs Lamont in during cross examination

<sup>22</sup> Matter of agreement stated on page 8 of CD10A

<sup>23</sup> Mrs Lamont's rebuttal statement

<sup>24</sup> Email of 23 September 2019 to the Planning Inspectorate from Mrs Mulliner on the appellant's behalf

<sup>25</sup> Appendix K to Mr Wall's PoE

<sup>26</sup> Appendix P to Mr Wall's Rebuttal Statement, Note from Vectos of September 2019 entitled 'Paramics modelling - comments on Sysra review and Mayer Brown rebuttal', ID12 and ID15

- running of PDV22 and written comments from the software's developer, Systra<sup>27</sup>.
44. For the AM peak period and using PDV22 the appellant estimates that the average westbound queue length would be 6.5 vehicles, with the average delays westbound and eastbound respectively being 43 and 10 seconds<sup>28</sup>.
  45. The disagreement about whether the running of PDV22 has reasonably represented the operation of option 3, essentially revolves around the behavioural response of westbound drivers to the signed priority and whether that response would cause significant queuing and driver delays. In that regard the appellant contends that the signed priority has been modelled too rigidly and would not be reflective of actual driver behaviour. It is therefore argued that the Council's prediction of the severity of the westbound queuing and delay times would be unrealistic. That is because TRL712 records that when signed priority shuttle working is in place drivers that do not have the priority only give some measure of preference to drivers in the opposing stream. That resulting in drivers without the priority experiencing around 65% of any delay, while the opposing drivers experience around 35% of any delay.
  46. While the appellant has sought to attach significant weight to the findings reported in TRL712, this report of study provides very little information about the computer modelling that was performed and the frequency and duration of the observations of driver behaviour that was undertaken at the two bridge locations that were used.
  47. With respect to the computer model referred to in TRL712, were that model to be of wider utility than just perhaps for conducting this study, I would have expected that it would be known to HCC and could have been drawn to Mr Wall's attention during the pre-application and/or application discussions that took place. I say that because within Hampshire road narrowing at bridges/archway is not uncommon, given the examples cited in Mr Wall's evidence and my own observations in determining various unrelated appeals elsewhere in this county. In a similar vein when the previously mentioned email exchange took place between representatives of the TRL and a colleague of Mrs Lamont about software suitability, if the model used in the 1982 study was of utility today then the TRL could have drawn it to the attention of Mrs Lamont's colleague. Instead of that there is reference to the TRL planning to develop new software to model shuttle working. Whatever form the model used in 1982 took, given the advances in computing that have occurred in the last 37 years, it is unlikely it would bare comparison with modern day software.
  48. With respect to the bridge locations used in the 1982 study, in the final paragraph in section 3.2 of TRL712 it is stated that traffic flow rates at the bridges and the proportions of traffic crossing the bridges in each direction were different. Those differences could have had implications for the observed driver behaviour that was used to validate the output from the running of the model used in this study.
  49. In the time since TRL712's publication there have been significant changes in vehicle technology, most particularly in terms of braking and engine

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<sup>27</sup> Mrs Lamont's Rebuttal Statement, including Appendix 3, ID9, ID10 and ID14

<sup>28</sup> Page 9 of CD10A

technology, which have implications for acceleration and deceleration rates. Vehicle performance is now very different and would not necessarily be reflected in the modelling undertaken as part of the 1982 study. I am therefore doubtful as to whether the acceleration rates used for the purposes of a study undertaken in 1982 can be relied upon today.

50. With respect to the observance of priority signage, much has been made of the Council's PDV22 model runs being too cautious, with it being argued that the modelled driver behaviour would be more akin to that of 'strictly enforced' priority in the language of TRL712. However, option 3 would entail the installation of 'give way' lines and signage clearly indicating that drivers should give way to on-coming traffic. That signing arrangement would in effect be very similar to what is found in the case of a side road forming part of a 'priority junction' where give way signage and road markings are in place, which are routinely observed without strict enforcement. I consider normal driver behaviour is to observe the instructions or warnings appearing on traffic signs, whether they be of a prohibitive or warning type.
51. I therefore consider it reasonable to expect that westbound drivers faced with priority give way signage would take heed of that signage and thus approach the bridge with caution and would avoid commencing a crossing if there was any doubt that it could not be completed safely. So, on approaching the give way point and when there were no eastbound vehicles on the bridge, a driver would need to decide whether there would be enough time to complete a crossing of the bridge before encountering a vehicle travelling in the opposing direction.
52. There is some disagreement as to how much time a driver would deem necessary to make a safe crossing of the bridge, with it also being argued that in working out the time needed westbound drivers would also make a calculation as to whether their crossing of the bridge would unreasonably delay an eastbound vehicle's crossing of the bridge. It being argued, in line with findings reported in TRL712, that if a westbound driver decided its actions would delay an eastbound vehicle then the former would not proceed.
53. In terms of the decision making to be made by westbound drivers, I consider the normal behaviour would be to decide whether a crossing could safely be made, with any decision making about whether their actions would cause delay for a driver travelling in the opposite direction only being a secondary concern. That is because while a westbound driver would be able to judge how long they would need to cross the bridge, they would be unlikely to be able to make the calculation when precisely an eastbound vehicle would arrive at the point where its driver would want to commence its crossing and what any delay caused to the driver of the eastbound vehicle would be.
54. I recognise that some westbound 'platooning' would be likely to arise. That is one vehicle or a group of vehicles following immediately behind another/other westbound vehicle/vehicles already crossing the bridge, irrespective of whether there might be an eastbound vehicle waiting to make a crossing of the bridge. However, I consider the number of vehicles making crossings during an individual platooning event would not necessarily be as great as argued by the appellant. That is because there would come a point at which a westbound driver would decide to observe the priority signage, rather than continue a sequence of not observing it, given that being behind a line of

crossing vehicles it would not necessarily be possible to see whether an eastbound vehicle with priority was waiting to make a crossing. So, while some platooning would arise and would have the potential to reduce westbound queuing and delays, I am not persuaded its occurrence and delay reducing potential would be of the significance claimed by the appellant.

55. As I have indicated above there is very limited information contained within TRL712 about the precise nature of the observation of drivers at narrow bridges, ie how many times driver observations were undertaken and how long they were. I therefore have concerns about driver delay under option 3 being applied on the basis of 35% and 65% respectively for drivers with and without the signed priority, as per the finding reported in TRL712. That being something the appellant has done in critiquing the Council's running of PDV22 to arrive at its finding that if this software is used then in the AM peak period the average westbound queuing length would be 6.5 vehicles and the delay would be of the order of 43 seconds<sup>29</sup>. The Council's review of the appellant's running of PDV22 suggests that the average maximum westbound queue length could be around 20 vehicles at 07:50 AM (ID10).
56. However, it appears that an unintended consequence of the appellant's rebalancing of the priority to replicate a 35%/65% delay split, is the build-up of eastbound queuing in the absence of much westbound traffic, as is apparent from the 07:46:25 screenshot contained in ID9B. Additionally, vehicles travelling in opposing directions crossing the bridge at the same time would appear to have arisen, as shown in some of the screenshots contained in ID9B.
57. For all of the reasons given above I am therefore not persuaded that much weight should be attached to the findings reported in TRL712 for the purposes of calibrating or validating runs for either PDV22 or for that matter ARCADY.
58. It is contended that the PDV22 model runs undertaken by the Council have been incorrectly calibrated. However, the review of those runs undertaken by Systra has not highlighted any fundamental errors in the way its model has been built and run on the Council's behalf. I am therefore inclined to attach greater weight to the commentary on the model's running provided by Systra than Vectos. That is because Systra, as software designer, could be expected to know precisely what its model is intended to do and whether its running by a 'client' has been appropriate, when consideration is given to the parameters needed to run the software.
59. While PDV22 is a new model and may well become subject to some refinement as more use is made of it, on the basis of everything put to me in evidence about it, I consider its use is more appropriate to that of ARCADY. That is because PDV22 has been designed to address narrow road situations, ARCADY is intended to model circulatory road movements and the TRL has advised that ARCADY is not an appropriate tool to model the operation of option 3.
60. While the queuing and delays under option 3 predicted by the Council's running of PDV22 may be somewhat exaggerated, I consider no reliance should be placed on the appellant's ARCADY assessments. In practice the effect on the flow of traffic associated with option 3's introduction would be

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<sup>29</sup> Page 9 of CD10A

likely to somewhere between the range of the results yielded by the appellant's and the Council's running of PDV22. That would be likely to result in queue lengths and driver delay exceeding the AM peak period occurrences that HCC found to be unacceptable when it concluded that the traffic light controlled option 4 would be unacceptable, ie mean maximum queuing of nine vehicles and delays westbound and eastbound respectively of 36.8 and 32.4 seconds<sup>30</sup>.

61. On the basis of the evidence before me I consider that the introduction of option 3 would result in unacceptable levels of queuing and delay for vehicular users of Downend Road.
62. The Council contends that the visibility splay falling within land within the appellant's control would be inadequate for drivers turning right from the development's access onto Downend Road. While a visibility splay that would be fully compliant with the most recent guidance, ie that contained in ID6<sup>31</sup>, would encroach onto third party land, that land comprises undeveloped land, including a ditch. It is therefore unlikely that any development would arise within the third party land, so close to the edge of the highway, as to affect the visibility for drivers emerging from the development's access. I therefore consider that there would be adequate visibility for drivers turning right out of the development's access and that 'edging out' type movements would be unlikely to cause any significant conflicts between drivers emerging from the site access and westbound road users approaching to the give way point proposed under option 3.
63. Concern has also been raised that the introduction of option 3 would adversely affect the vehicular access used by the occupiers of 38 Downend Road (No 38). No 38 lies immediately to the south of the railway line and has a double width dropped kerb providing access to this dwelling's off-street parking. The visibility for drivers emerging from No 38 is already affected by the railway bridge's parapet.
64. The works associated with the implementation of option 3 would have some implications for the manoeuvring for drivers turning right from No 38. However, I consider the new situation would not be greatly different to the existing one and introducing a shuttle working layout would have very little effect on the forward visibility for vehicles emerging from No 38 because there would be no alterations to the railway bridge's parapet. Regard also needs to be paid to the fact that in any given day the number of vehicle movements associated with No 38's occupation would be quite limited, given this access serves a single property. I consider it of note that the safety auditing that has been undertaken to date has not highlighted any particular safety concerns for vehicles emerging from No 38's access associated with the design of option 3.
65. I am therefore not persuaded that the introduction of option 3 would have any adverse effect on the use of No 38's access.

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<sup>30</sup> Table 3.1 in CD29

<sup>31</sup> Junction visibility extract from Design Manual for Road and Bridges CD123 Revision 0 (August 2019)

Conclusions on pedestrian access via Downend Road and effects on the operation of Downend Road

66. For the reasons given above I found that the 1.2 metre wide footway to be provided as part of option 2, would not provide a safe facility for its users.
67. Option 3 through the narrowing of the carriageway to 3.5 metres would provide a safe pedestrian route. However, the narrowing of the carriageway would be likely to result in vehicle queuing and delay during the AM peak period. The precise degree of that queuing and delay is the subject of considerable disagreement, with it having proved quite difficult to model. That is because when Mr Wall prepared the original transport assessment (CD15) there appears to have been no readily available software capable of modelling a road narrowing such as that envisaged under option 3. That led to the use of ARCADY, which as I have explained above, I consider cannot be relied upon, not least because the TRL has stated that it is not suited to modelling shuttle working. In connection with presenting its appeal case the Council has used the comparatively new and not widely tested PDV22, the running of which suggests that considerable vehicle queuing and driver delay could be encountered by westbound vehicular traffic.
68. The appellant has sought to persuade me that the results from the Council's running of PDV22 should not be relied on because it has been set up to run with parameters that are exaggerating vehicle queuing and driver delay because the observation of the signed priority by westbound traffic has been too rigid. The appellant's critique of PDV22 in no small measure relies on computer modelling and behavioural observations at narrow bridges undertaken in connection with the TRL712 study dating back to 1982. However, for the reasons I have given above I have significant reservations about how meaningful the findings reported in TRL712 are today.
69. I recognise that the Council's running of PDV22 may have generated unduly pessimistic queuing lengths and delay times. That said I consider more credence can be attached to the Council's running of PDV22 than either the appellant's running of ARCADY or the appellant's modified running of PDV22, the latter understating the reasonable observance of the signed priority that would underpin the functioning of option 3. The degree of vehicle queuing and driver delay would probably be somewhere between levels estimated through the appellant's and the Council's running of PDV22. Given that the scale of the delay may well exceed that which led HCC to believe that a traffic light variant of option 3, ie option 4, should be discounted. I therefore consider that option 4 may well have been prematurely discounted by HCC. That is because HCC accepted option 3 as being a safe and efficient option, based on modelling reliant on the use of ARCADY.
70. Much has been made of HCC being accepting of both options 2 and 3, but as I have said above, I consider those options have pedestrian safety and capacity shortcomings. I am not persuaded, on the evidence available to me, that I should accept that because HCC has raised no objection to options 2 and 3 then either would be acceptable.
71. A fifth option (option 5) that would retain a two-way traffic flow, without a footway being provided or a narrowing of the carriageway, with an all pedestrian zone activated by traffic lights, on demand by pedestrians wishing to cross the bridge, was put forward prior to the appealed application's

determination. However, option 5 appears to have discounted on safety grounds by HCC on the erroneous premise that it would involve the operation of an unusual form of shuttle working. I therefore consider that option 5 may also have been prematurely discounted by HCC because of a fundamental misunderstanding of the way in which it would function.

72. On this issue I conclude that the development with the implementation of option 2 would make inadequate provision for pedestrian access via Downend Road, while the implementation of option 3, in making adequate provision for pedestrian users of Downend Road, would unacceptably affect the operation of this road because of the vehicle queuing and driver delay that would arise. The development would therefore be contrary to the second criterion of Policy CS5 of the Fareham Core Strategy of 2011 (the Core Strategy) insofar as when the development is taken as a whole it would generate significant demand for travel and were option 2 to be implemented it would not provide a good quality walking facility for its occupiers. The development, were option 3 to be implemented, would also be contrary to Policy CS5 (the second bullet point under the third criterion) because it would adversely affect the operation of Downend Road as a part of the local road network.
73. There would also be conflict with Policy DS40 of the Fareham Local Plan Part 2: Development Sites and Policies of 2015 (the DSP) because the implementation of option 3 would have an unacceptable traffic implication.
74. I also consider that there would be conflict with paragraph 109 of the National Planning Policy Framework (the Framework) because the implementation of option 3 in safeguarding the safety of pedestrians would give rise to a residual cumulative effect, vehicle queuing and driver delay, that would be severe for the road network. The development would also not accord with paragraph 110c) of the Framework because the implementation of option 2 would create a place that would not be safe because of the conflict that there would be between pedestrians and vehicles through the provision of an unduly narrow footway within part of the public highway.

#### *Accessibility to services and facilities*

75. The development would be on the edge of Portchester's already quite intensively built up area and it would adjoin an area that is predominantly residential in character. The existing development in the area lies to the south of the M27 and is on either side of the A27 corridor, which essentially follows an east/west alignment.
76. As I have previously indicated there is considerable disagreement about the site's accessibility to local services and facilities by non-private motorised modes of travel. In that regard the appellant is of the view that the development would generate in the region of 650 pedestrian movements per day, while the Council places that figure at a little short of 300 movements. Central to that disagreement is whether the distance there would be between the new homes and places of work and education, shopping, leisure and public transport facilities (the local facilities and services) would be too far as to be accessible by walking trips.
77. Figure T2 in the originally submitted Transport Assessment (page 66 of CD15) identifies where the local services and facilities are relative to the appeal site. Many of those service and facilities are clustered around Portchester's

shopping/district centre. When regard is paid to the various tables within Appendix C of Mr Wall's proof of evidence it is apparent that many of the local services and facilities shown in Figure T2 would be at distances from the development that would exceed the 'acceptable walking distances' referred to in CIHT2000 (CD25).

78. The three proposed pedestrian routes, A, B and C, would variously provide egress and ingress from the development. However, routes A, B and C would be of varying levels of attractiveness. In that regard I consider route C would not be particularly attractive because the section comprising footpath FP117 would be unlit and that would affect its general utility after darkness, particularly for commuters on their return from Portchester railway station. Generally, the use of all three routes would entail walking trips that would exceed the CIHT2000 guidelines for travelling to and from town centres, while the railway stations in Portchester and Fareham would not be within a comfortable walking distances from the development. The access to bus stops in the area would exceed the 400 metre guideline recently reaffirmed by the CIHT in its 'Buses in urban developments' guidance of January 2018 (CD28).
79. So, I think it reasonable to say that the development would fall short of being particularly accessible by transportation modes other than private motor vehicles. In that regard the appellants' estimates for the number of non-private motor vehicle trips may well be quite optimistic. That said this development would be close to many other dwellings in Portchester and the accessibility to local services and facilities would be similar to that for many of the existing residents of the area. Given the existing pattern of development in the area, I consider there would be few opportunities for new housing to be built in Portchester on sites that would be significantly more accessible than the appeal site, something that the maps in Appendix R to Mr Wall's proof of evidence show. In that regard it is of note that the Council is considering allocating this site for development in connection with the preparation of its new local plan.
80. On this issue I therefore conclude that there would not be an unreasonable level of accessibility to local services and facilities for the occupiers of the development by a range of modes of transport. I therefore consider that the development would accord with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP because it would not be situated in an inaccessible location and it would be well related to the existing urban settlement boundary for Portchester.

#### *Effects on the designated habitats*

81. The appellant, the Council and Natural England (NE) are agreed that the development would be likely to have a significant effect on the designated habitats, namely in-combination effects associated with: increased recreational activity in the Portsmouth Harbour Special Protection Area (SPA) and the Solent and Southampton Water SPA; and the increased risk of flooding in the Portsmouth Harbour SPA and Ramsar site and the Solent and Dorset Coast candidate SPA. Additionally, there would be potential for the development to have a significant effect either alone or in combination with other developments arising from nitrogen in waste water being discharged into the designated habitats.

82. Under the provisions of Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended) (the HRs), there is a requirement to undertake a screening assessment to determine whether a development alone or in combination with others would be likely to have a significant effect on integrity of the internationally important interest features that have caused a habitat to be designated. Having regard to the ecological information that is available to me, including the statement of common ground signed by the appellant, the Council and NE (CD13) I find for the purposes of undertaking a screening assessment that this development in combination with others would be likely to have a significant effect on the interest features of the designated habitats through additional recreational activity and the risk of flooding.
83. With respect to the matter of additional nitrogen in waste water being discharged into the designated habitats, I am content, on the basis of the nitrogen balance calculation included as Appendix 4 in CD13, that the development would not give rise to an increased discharge of nitrogen within the designated habitats.
84. Having undertaken a screening assessment and determined that there would be a significant effect on the designated habitats, I am content that mitigation could be provided so that the integrity of the qualifying features of the designated habitats would be safeguarded. The nature of the necessary mitigation has been identified in CD13 and would take the form of the payment of a contribution to fund management measures identified in the Solent Recreation Mitigation Strategy of 2018 and the imposition of planning conditions to avoid the development causing flooding in the area. The necessary financial contribution forms one of the planning obligations included in the executed S106.
85. In the event of this appeal being allowed I consider the imposition of conditions requiring: the incorporation of a sustainable drainage scheme within the development; the implementation of construction environmental management plan that included measures to preclude the pollution of the waters within the designated habitats during the construction phase; and a limitation on water usage for the occupiers of the development would be necessary and reasonable to safeguard the integrity of the designated habitats.
86. I therefore conclude that the development, with the provision of the mitigation I have referred to above, could be implemented so as to safeguard the integrity of the designated habitats. In that respect the development would accord with Policy CS4 of the Core Strategy and Policies DSP13 and DSP15 of the DSP because important habitats would be protected.

## **Other Matters**

### *Housing Land Supply*

87. The Council cannot currently demonstrate the availability of a five year housing supply (5yrHLS), with it being agreed that the current five year requirement is 2,730 dwellings. However, there is disagreement as to what the quantum of the 5yrHLS shortfall is when regard is paid to the supply of deliverable sites for homes, having regard to the definition for 'deliverable' stated in Annex 2 of the Framework. That definition stating to be considered deliverable:

'... sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular: ...  
b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.'

88. The appellant contends that the current deliverable supply of homes is 1,323 dwellings, equivalent to HLS of 2.4 years, while the Council argues that the deliverable supply of homes is 2,544 homes, equivalent to an HLS of 4.66 years<sup>32</sup>.
89. That difference being attributable to the appellant having deducted 1,221 dwellings from the deliverable supply identified by the Council. That deduction being made up of: 761 dwellings associated with large sites without development plan allocations and not benefiting from a planning permission (inclusive of some with resolutions to approve); 100 dwellings on the brownfield register, but with no submitted application; 70 dwellings concerning allocated sites but only with a resolution for approval; 50 dwellings concerning allocated sites without a planning permission; and 240 dwellings forming part of the Welborne allocation that would not be delivered in the five year period because planning permission for that development has not been issued.
90. The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.
91. The development would therefore be capable of making a meaningful contribution to the reduction of the current housing shortfall, with 215 dwellings anticipated to be delivered in the five year period between January 2022 and the end of March 2024<sup>33</sup>.

#### *Heritage effects*

92. The development would be situated within the extended settings for: Portchester Castle, a Grade I listed building and scheduled monument; Fort Nelson, a Grade II\* listed building and scheduled monument; and the Nelson Monument, a Grade II\* listed building. The Castle is situated to the south of the site towards the northern extremity of Portsmouth Harbour. Fort Nelson and the Nelson Monument lie to the north of the site, off Portsdown Hill Road.
93. The designated heritage assets are of significance because of their importance to the military history of the local area. However, I consider the effect of the development on the significance of the heritage assets would be less than

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<sup>32</sup> Having regard to the figures quoted in paragraphs 1.18 and 1.19 in the Housing Land Supply SoCG (CD14)

<sup>33</sup> Table 1 in Mrs Mulliner's PoE

substantial, having regard to the policies stated in section 16 (Conserving and enhancing the historic environment) of the Framework. That is because the development would be read within the context of Portchester's extensive established built up area. Nevertheless, paragraph 193 of the Framework advises '... great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'. The less than substantial harm I have referred to therefore attracts great weight.

### *Planning Obligations*

94. The S106 would secure the provision of 40% affordable housing within the development to accord with the provisions of Policy CS18 of the Core Strategy. To mitigate the development's off-site effects on the operation of the local highway network and demands on local transport infrastructure the S106 includes various obligations that would require contributions to be paid to fund appropriate works. There are also obligations relating to the, the provision of and the payment of maintenance contributions for public open and play space and the payment of a contribution for school facilities in the area. To minimise dependency on private motor vehicle usage amongst occupiers of the development the S106 includes planning obligations that would require the undertaking of improvements to the Cams bridge and implementation of a travel plan.
95. Those planning obligations would address development plan policy requirements and I consider that they would be: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. While the planning obligations are necessary, of themselves there is nothing particularly exceptional about them.

### **Planning Balance and Conclusion**

96. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
97. For the reasons given above I have found that the development with the implementation of the option 2 alteration to the Downend Road railway bridge would make inadequate provision for pedestrian access via Downend Road. I have also found that while the implementation of the option 3 alteration to the Downend Road railway bridge would make adequate provision for pedestrian users of Downend Road, the development would unacceptably affect the operation of this road because of the vehicle queuing and driver delay that would arise. I consider those unacceptable effects of the development give rise to conflict with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP and paragraphs 109 and 110c). I consider that the elements of Policies CS5 and DSP40 that the development would be in conflict with are consistent with the national policy and are the most important development plan policies for the purposes of the determination of this appeal. I therefore consider that great weight should be attached to the conflict with the development plan that I have identified.

98. I have found that the accessibility to local services and facilities by modes of transportation other than private motor vehicles would not be unreasonable. That is something that weighs for the social benefits of the development. The development would be capable of being implemented in a manner that would safeguard the integrity of the off-site designated habitats and in that regard the development would have a neutral effect on the natural environment. In relation to these main issues there would be compliance with some of the development plan's policies. Nevertheless, the conflicts with the development plan that I have identified are of sufficient importance that the development should be regarded as being in conflict with the development plan as a whole.
99. There would be significant social and economic benefits arising from the construction and occupation of up to 350 dwellings, including the short term boost to the supply of market and affordable homes in the Council's area. There would be some harm to the setting of the nationally designated heritage assets in the area, however, I have found that harm would be less than substantial and I consider that harm would be outweighed by the previously mentioned social and economic benefits arising from the development.
100. I am of the view that the unacceptable harm to pedestrian safety and the operation of the public highway that I have identified could not be addressed through the imposition of reasonable planning conditions. I have assessed all of the other material considerations in this case, including the benefits identified by the Appellant, but in the overall planning balance I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
101. I therefore conclude that the appeal should be dismissed.

*Grahame Gould*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

John Litton	Of Queens Counsel instructed by Terence O'Rourke Limited
Tim Wall BA MSc MCIHT CMILT	Associate Partner of i-Transport LLP
Jacqueline Mulliner BA (Hons) BTP (Dist) MRTPI	Director and Head of national planning with Terence O'Rourke Limited

### FOR FAREHAM BOROUGH COUNCIL:

David Lintott	Of Counsel instructed by the Council's legal officer
Vera Lamont BEng MICE FCIHT MCMi	Director with Mayer Brown
Andrew Burgess BA (Hons) MRTPI FRSA	Senior consultant with Adams and Hendry Consulting Limited
Richard Wright	Principal Planner (Development Management)

### INTERESTED PARTIES:

Councillor Nick Walker	Fareham Borough Council
Councillor Roger Price	Fareham Borough Council
Councillor Shaun Cunningham	Fareham Borough Council
John McClimont	Chairman Fareham Society
Brian Eastop	Local Resident
Anne Brierly	Local Resident

## **INQUIRY DOCUMENTS (IDs) SUBMITTED AT OR AFTER THE INQUIRY**

ID1	Mr Lintott's opening submissions on behalf of Fareham Borough Council
ID2	Mr Litton's opening submissions on behalf of the appellant, with appendices
ID3	Statement of Councillor Walker and Councillor Sue Bell
ID4	Statement of Mr McClimont, Chairman of the Fareham Society

- ID5 Article by John Fruin 'Designing for pedestrians: a level-of-service concept'
- ID6 Junction visibility extract from Design Manual for Road and Bridges CD123 Revision 0 (August 2019)
- ID7 i-Transport drawings ITB12212-TR: 001A; 002A; 003A; 006A; and 007A and ITB12212-GA-104A annotated by Mayer Brown
- ID8 Mayer Brown additional statement of facts
- ID9 Vectos Model re-run by Mayer Brown output data and screen shots
- ID10 Queue Assessment Information (including data sheets) from i-Transport, response to rerun of Vectos Model undertaken by Mayer Brown
- ID11 Annotated services/facilities context maps of the footways at bridges/tunnels examples included in Appendix V of Mr Wall's Proof of Evidence
- ID12 Vectos comments on the Downend Road Railway Bridge Paramics Modelling undertaken by Mayer Brown in September 2019 further to the review comments being made by Systra
- ID13 Councillor's Cunningham's speaking note
- ID14 Mayer Brown Video file for the operation of Downend Road Bridge
- ID15 i-Transport Video file for the operation of Downend Road Bridge
- ID16 Mrs Mulliner's speaking note on housing land supply
- ID17 Copies of development plan policies CS4, DSP13, DSP15
- ID18 Final version of list of suggested planning
- ID19 Certificated copy of the executed Section 106 agreement
- ID20 Final version of the Inquiry Position Statement
- ID21 Mr Lintott's written closing submissions on behalf of Fareham Borough Council
- ID22 Mr Litton's written closing submissions on behalf of the appellant



## Appeal Decisions

Inquiry Held on 9-12, 16-19 and 23-25 February 2021

Accompanied site visit made on 13 April 2021

**by I Jenkins BSc CEng MICE MCIWEM**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 8<sup>th</sup> June 2021**

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### **Appeal A Ref: APP/A1720/W/20/3252180**

#### **Land at Newgate Lane (North), Fareham,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Fareham Land LP against Fareham Borough Council.
  - The application Ref. P/18/118/OA, is dated 19 September 2018.
  - The development proposed is demolition of existing buildings and development of up to 75 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure.
- 

### **Appeal B Ref: APP/A1720/W/20/3252185**

#### **Land at Newgate Lane (South), Fareham,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Bargate Homes Ltd. against Fareham Borough Council.
  - The application Ref. P/19/0460/OA, is dated 26 April 2019.
  - The development proposed is demolition of existing buildings and development of up to 115 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure.
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## **Decisions**

1. Appeal A is dismissed and the outline planning permission sought is refused.
2. Appeal B is dismissed and the outline planning permission sought is refused.

## **Procedural matters**

3. In each case, the planning application subject of appeal is in outline, with all detailed matters except access reserved for future consideration. While the application subject of appeal B was with the Council for determination, the scheme was revised with the agreement of the Council by limiting the unit numbers to 'up to 115 dwellings', rather than 'up to 125 dwellings' as identified on the planning application form. The change was supported by amended plans. I have considered the appeal on the basis of the revised scheme and reflected the details in the summary information above.
4. Following the submission of the appeals, the Council's Planning Committee determined on the 24 June 2020 that, were it still in a position to do so,

it would have refused to grant planning permission in both cases. In support of its view, the Council cited 15 reasons for refusal in each case (a)-o)).

The reasons for refusal were the same with the exception of: appeal A reason e), which relates to the loss of best and most versatile agricultural land; and, appeal B reason i) related to the protection and enhancement of Chamomile. Prior to the Inquiry, the Council confirmed that, in each case, 3 of the other reasons for refusal had been satisfactorily addressed: appeal A reasons f), g) and i); and, appeal B reasons e), f) and h).

5. Each of the schemes is supported by a formally completed unilateral undertaking (UU): appeal site A-UUA; and, appeal site B-UUB, which seek to secure a number of financial contributions, Affordable Housing and sustainable travel measures. In addition, the appellants have provided a unilateral undertaking related to off-site mitigation for the loss of a low use Solent Wader and Brent Goose site (UUC). I have taken those UUs into account.
6. Reasons for refusal j) and k) relate to the absence of appropriate measures to mitigate likely adverse effects on the integrity of European Protected Sites. The appellants and the Council are content that those matters have now been satisfactorily addressed by mitigation measures secured by the unilateral undertakings. Nonetheless, there is no dispute that if I were minded to allow the appeals, I would need to re-consult Natural England and undertake an Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017*.
7. Reasons for refusal k)-o) relate to the absence of legal agreements to secure other necessary mitigation measures. However, the Council now considers that those reasons have been satisfactorily addressed by the submitted UUs or could be addressed through the imposition of suitable conditions.
8. Insofar as appeal A reason for refusal h) and appeal B reason for refusal g) relate to the capacity of the Newgate Lane East junction with Newgate Lane, the Council withdrew<sup>1</sup> that aspect of its case before the appellants presented their evidence on the matter<sup>2</sup>. Therefore, I have not considered it further.

### **Main Issues**

9. I consider that the main issues in these cases are: the effect of the proposals on the character and appearance of the area; the effect on highway safety; whether, with reference to accessibility, the schemes would be sustainably located; the effect on the spatial development strategy for the area; and, the effect on housing land supply.

### **Reasons**

10. Appeal site A comprises 3.95 hectares of agricultural land, which is bounded by a small area of agricultural land to the north, Newgate Lane to the west and Newgate Lane East to the east. The site shares a small proportion of its southern boundary with Hambrook Lodge and the remainder is shared with appeal site B. The appeal A proposal would involve the development of up to 75 dwellings within the site as well as other associated works. Appeal site B comprises 6.1 hectares of agricultural land, which is bounded by Woodcote Lane to the south, Newgate Lane to the west and Newgate Lane East to the

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<sup>1</sup> Including the evidence given by Mr Whitehead.

<sup>2</sup> Inquiry document no. 23.

east. Part way along its length, the northern boundary of the site wraps around the western, southern, and eastern boundaries of the grounds of Hambrook Lodge. Otherwise appeal site B shares its northern boundary with appeal site A. The appeal B proposal would involve the development of up to 115 dwellings within the site as well as other associated works.

11. Vehicular, cycle and pedestrian access to each site would be provided by an access road leading from Newgate Lane. A pedestrian/cycle route is also proposed from appeal site A through appeal site B to Woodcote Lane, leading to the proposed Toucan crossing of Newgate Lane East and Bridgemary. The proposed Toucan crossing would be funded through the provision of a contribution secured by UUB. The *Statement of Common Ground-Linked Delivery* (SoCGLD) has been agreed between the appellants and the Council. It indicates that it would be possible to ensure that the appeal A scheme cannot come forward independently of the appeal B scheme through the imposition of a Grampian condition, thereby ensuring the provision of those proposed access links.
12. The appeal sites form part of an area of countryside situated between the urban settlement boundary of Stubbington, to the west, Gosport, to the east and Fareham, to the north. The settlement referred to as Peel Common in the evidence of the main parties is limited to the residential and commercial properties located off Newgate Lane, Woodcote Lane and Albert Road, within the administrative area of Fareham Borough Council (the Council). Under the terms of the Development Plan, Peel Common does not have a defined settlement boundary and it is also situated in the area of countryside that includes the appeal sites. Furthermore, it does not include the 'Peel Common' housing estate located further to the east within Gosport Borough Council's administrative area. The closest urban boundary to the appeal sites is to the east and is associated with a number of areas within Gosport, such as Bridgemary, Woodcot and the 'Peel Common' housing estate. For simplicity, those areas have been jointly referred to in the evidence of the main parties as Bridgemary. I have taken the same approach in these decisions.
13. Policy CS14 of the *Fareham Local Development Framework Core Strategy, 2011* (LP1) indicates that built development on land outside the defined settlements will be strictly controlled to protect the countryside from development which would adversely affect its landscape character, appearance and function. Policy DSP6 of *the Local Plan Part 2: Development Sites and Policies, 2015* (LP2) indicates that there will be a presumption against new residential development outside the defined urban settlement boundaries (as identified on the Policies Map) and that proposals should not result in detrimental impact on the character or landscape of the surrounding area.
14. The area of countryside situated between the settlement boundary of Stubbington, to the west, Gosport, to the east and Fareham, to the north also forms part of the Stubbington/Lee-on-the-Solent and Fareham/Gosport Strategic Gap (Fareham-Stubbington Gap), shown on the LP2 Policies Map Booklet. LP1 Policy CS22 indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
15. However, the Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites.

The reasoned justification for LP2 Policy DSP40 indicates that the Council is committed to delivering the housing targets in the Core Strategy, and so it is important to provide a contingency position in the Plan to deal with unforeseen problems with delivery. To that end, Policy DSP40 indicates that where it can be demonstrated that the Council does not have a five-year supply of land for housing, additional sites, outside the urban area boundary, within the countryside and Strategic Gaps, may be permitted where they meet a number of criteria (the DSP40 contingency). Those criteria are not as restrictive as the requirements of LP1 Policies CS14 and CS22 or LP2 Policy DSP6. To my mind, it follows that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies would be reduced and would be outweighed by compliance with LP2 Policy DSP40.

### ***Character and appearance of the area***

16. Criterion (ii) of LP2 Policy DSP40 requires that the proposal is well related to the existing urban settlement boundaries and can be well integrated with the neighbouring settlement. To ensure that this is the case, the reasoned justification for the Policy indicates that sensitive design will be necessary. The Council and the appellants agree that the existing urban settlement boundary of Bridgemary is relevant in this context. Criterion (iii) of Policy DSP40 requires that the proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the countryside and, if relevant, the Strategic Gaps. In this context the main parties agree that both Bridgemary and Peel Common are relevant neighbouring settlements. The reasoned justification for LP1 Policy CS22, which deals with development in Strategic Gaps, indicates that they do not have intrinsic landscape value but are important in maintaining the settlement pattern. I consider therefore, that the Strategic Gap designation is of little relevance to this particular main issue. I deal with the effect on the Fareham-Stubbington Gap later in this decision.
17. Peel Common would be the closest settlement to both appeal sites. The pattern of built development there is characterised, for the most part, by ribbon development that fronts onto the western side of Newgate Lane, with small spurs eastwards along the southern side of Woodcote Lane and westwards along Albert Road. Along Newgate Lane the ribbon of development only extends northwards to a point just beyond the alignment of the southern boundary of appeal site A on the opposite side of the highway. I consider that the only notable development to the west of appeal site A, on the western side of Newgate Lane, comprises: Peel Common Wastewater Treatment Works, which is set well back from the highway and is screened from view by landscaping; and, Newlands' Solar Farm, which is relatively low profile. Peel Common is described by the *Fareham Landscape Assessment, 2017* (FLA) as an isolated small settlement and, in my view, given its scale, pattern of development and location in the countryside, that is a reasonable assessment.
18. Both appeal sites are divided into an eastern and western section by the River Alver, which runs in a north-south direction through the sites. To the east of the river the land within the appeal sites is predominantly arable and to the west grassland. The latest Illustrative Masterplans submitted in support of the schemes indicate that, in both cases, the proposed dwellings would be clustered on the eastern side of the River Alver and the land to the west would comprise public open space. To my mind, the absence of residential

development from the western sections of the sites would be necessary, due to the environmental constraints associated with the land to the west of the river, and it could be secured by condition. The constraints include areas at high risk of surface water flooding and of particular ecological value.

19. As a result, and in stark contrast to the existing settlement pattern of Peel Common, none of the proposed residential properties would front onto Newgate Lane or be directly accessed from either Newgate Lane or Woodcote Lane. Links between appeal site B and Woodcote Lane would be limited to a pedestrian/cycleway connection. In each case, the main access to the proposed residential areas would comprise a single access road between Newgate Lane and the eastern section of each site. The sections of these roads through the proposed public open space, in the western sections of the sites, would be devoid of roadside development for the reasons set out above, which would further weaken the relationship between the proposed residential areas and the existing settlement. I understand that in terms of dwelling numbers, the appeal B scheme would be larger than the size of the existing settlement of Peel Common and the appeal schemes together would be approximately double its size. I consider that, with particular reference to their size and location, the proposals have not been sensitively designed to reflect the character of the neighbouring settlement of Peel Common, contrary to the aims of LP2 policy DSP40(iii). Furthermore, in my judgement, due to the site constraints, these are not matters that could be satisfactorily mitigated through design at the reserved matters stage.
20. The area of Bridgemarky, which is situated to the east of the appeal sites, is primarily residential in character, with a variety of building styles generally of 1 to 2-storeys in height. A network of roads and footways provides for ease of movement within that residential area and closely integrates it with the much larger urban area of Gosport. The appeal proposals would also be residential in character and proposed buildings of a similar scale could be secured by condition. However, the appeal sites would be set well apart from that existing urban area, beyond agricultural fields and a recreation ground. The most direct access route between them would be along Woodcote Lane, across Newgate Lane East and along Brookes Lane; a route unsuitable for cars. In my judgement, the appeal schemes, whether considered on their own or together would comprise and would be perceived as islands of development in the countryside set apart from the existing urban settlements. They would not amount to logical extensions to the existing urban areas. I consider that, with particular reference to their isolated location, the proposals have not been sensitively designed to reflect the character of the neighbouring settlement of Bridgemarky. Furthermore, they would not be well related to the existing urban settlement boundary of Bridgemarky or well-integrated with it. In these respects, the proposals would conflict with LP2 Policy DSP40(ii) and (iii). In my judgement, due to the location of the sites, these are not matters that could be satisfactorily mitigated through design at the reserved matters stage.
21. In relation to the requirement of Policy DSP40(iii) that any adverse impact on the countryside be minimised, the Council argues that 'minimise' should be interpreted as requiring any adverse impact to be small or insignificant. I do not agree. The aim of the Policy is to facilitate development in the countryside relative in scale to the demonstrated five-year housing land supply shortfall. To my mind, any new housing development in the countryside would be likely to register some adverse landscape and visual effect, and

development of a scale to address a substantial shortfall would be unlikely to register a small or insignificant impact. The Council's approach would make the Policy self-defeating. Given the aim of the Policy with respect to housing land supply, I consider that it would be reasonable to take 'minimise' to mean limiting any adverse impact, having regard to factors such as careful location, scale, disposition and landscape treatment.

22. The Framework places particular emphasis on the protection and enhancement of valued landscapes (in a manner commensurate with their statutory status or identified quality in the Development Plan). It seeks to give the greatest level of protection to the landscape and scenic beauty of designated areas, such as National Parks and Areas of Outstanding National Beauty (AONB). The appeal sites are not the subject of any statutory or non-statutory landscape designations. Nonetheless, *Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA)* by the Landscape Institute and Institute of Environmental Management & Assessment indicates that the absence of a designation does not mean that an area of landscape is without any value and points to landscape character assessments as a means of identifying which aspects of a landscape are particularly valued. Furthermore, insofar as it seeks to minimise any adverse impact on the countryside, I consider that LP2 Policy DSP40 is consistent with the Framework, which seeks to ensure that decisions contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
23. As the planning applications the subject of these appeals are in outline, a full assessment of the landscape and visual impacts of the proposed schemes cannot be carried out at this stage. Nonetheless, the illustrative layout plans indicate that, in each case, the proposed dwellings would be set back from the perimeter of the site beyond relatively narrow areas of landscaping. To my mind, the scope for landscaping would be unlikely to be significantly greater, given the number of dwellings proposed and that it would not be reasonable to seek to use a condition to modify the developments to make them substantially smaller in terms of unit numbers than that which was applied for. In my view, that would amount to a change upon which interested parties could reasonably expect to be consulted and would require a new application. Whilst the Design and Access Statements indicate that the proposed buildings may be up to 3-storeys in height, the appellants have indicated that they could be limited to 1-2 storeys, in keeping with the surroundings, through the imposition of conditions and without reducing the numbers of units proposed.

#### *Landscape impact*

24. GLVIA indicates that the assessment of landscape effects involves assessing the effects on the landscape as a resource in its own right. This is not just about physical elements and features that make up the landscape; it also embraces the aesthetic<sup>3</sup>, perceptual and experiential aspects of the landscape that make different places distinctive/valued.
25. Natural England's *National Character Assessment* places the appeal sites within the South Coast Plain National Character Area, the characteristics of which include that the plain slopes gently southwards towards the coast and there are

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<sup>3</sup> CD138 page 84 Box 5.1 'scenic quality...landscapes that appeal primarily to the visual senses', perceptual aspects...perceptual qualities, notably wilderness and/or tranquillity', 'experiential 'evidence that the landscape is valued for recreational activity where experience of the landscape is important'.

stretches of farmland between developed areas. At a county level, the sites form part of the Gosport and Fareham Coastal Plain Landscape Character Area, as identified by the *Hampshire Integrated Character Assessment 2012* (HICA), and within that area part of the Coastal Plain Open Landscape Type.

Its characteristics include, amongst other things, extensive and flat or gently sloping plain, often associated with arable land uses and some of the most densely developed areas in Hampshire have occurred in this landscape.

The HICA informed the *Fareham Landscape Assessment, 2017* (FLA), which was commissioned by the Council to inform emerging Local Plan policy.

26. The FLA identifies the area within which the appeal sites are situated as Landscape Character Area 8 (LCA 8), Woodcot-Alver Valley. LCA 8 forms part of the easternmost extent of the Fareham-Stubbington Gap and is divided into 5 Local Landscape Character Areas (LLCAs). More specifically appeal site A and the majority of appeal site B, with the exception of the strip of land to the west of the River Alver, fall within LLCA 8.1a. This area is generally bounded by Newgate lane to the west, Woodcote Lane to the south, the western edge of Bridgemary to the east and Speedfields Park Playing Fields to the north. Outside of this LLCA, to the west and south are the main residential sections of the Peel Common settlement, which fall within LLCA 8.2: *Peel Common and Alver Valley*, as does the western section of the appeal B site. Newlands' Solar Farm and Peel Common Wastewater Treatment Works, which are sited to the west of the appeal sites, fall within LLCA 7.1: *Fareham-Stubbington Gap*.
27. The FLA comments both on the character of LLCA 8.1a prior to the completion of Newgate Lane East and on the likely implications of that highways scheme.
28. Prior to the completion of Newgate Lane East, the FLA recognises that LLCA 8.1a is not covered by any current national or local landscape designation, its scenic quality is not exceptional and it is affected by some localised intrusion of urban features around its periphery. It indicates that LLCA 8.1a shares the typically flat, low-lying character of the coastal plain landscape and whilst it lacks the very open, expansive character of other parts of the coastal plain (including adjacent land within the Strategic Gap to the west), it nevertheless has a relatively open and large-scale character. More specifically, it is generally devoid of built development (apart from buildings at Peel Farm<sup>4</sup>), retains a predominantly open, rural, agricultural character, and tree belts along its boundaries to the north, east and south give the area a sense of enclosure from surrounding urban areas and contribute to its aesthetic appeal. The FLA indicates that overall, the landscape value of LLCA 8.1a is moderate to high. Furthermore, the FLA identifies that the landscape resource has a high susceptibility to change, as it has very limited capacity to accommodate development without a significant impact on the integrity of the area's rural, agricultural character. Whilst these judgements are not disputed, the Council and appellants disagree over the impact that the construction of Newgate Lane East has had.
29. Regarding Newgate Lane East, the FLA anticipated that as the road corridor would be relatively narrow, unaffected land within the rest of the area should be of sufficient scale to maintain its essentially rural character. In my view, this is the case notwithstanding that the roadside planting, which has the potential to reduce the visibility of the highway and associated fencing, has yet to

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<sup>4</sup> Around Hambrook Lodge.

mature. Furthermore, given the relatively low profile of the road scheme, the openness of the area is largely unaffected. Under these circumstances, I consider that whilst the landscape value of LLCA 8.1a has been reduced by the road scheme to medium, the susceptibility of the landscape to change remains high, rather than low/medium identified by the *Landscape and Visual Impact Assessments* submitted in support of the applications (LVIAs). Support for this judgement is provided by the FLA, which indicates that significant further development in addition to the road scheme would almost certainly have an overwhelming urbanising effect, potentially tipping the balance towards a predominantly urban character. Overall, I regard the sensitivity of the landscape resource within LLCA 8.1a to be medium/high, consistent with the Council's Landscape and Visual Assessment findings, and contrary to the low/medium findings set out in the LVIAs.

30. In both cases, the proposals would replace a significant proportion of the agricultural land within LLCA 8.1a with residential development. Whether single-storey or taller buildings are proposed, the massing of each development would add to the sense of enclosure of this LLCA, greatly diminishing its open character and the duration of the impact would be long term. Considering each scheme on its own, the size and scale of the change, taken together with the existing limited intrusion from surrounding urban influences and the effect of Newgate Lane East, would be sufficient in my judgement to tip the balance towards a predominantly urban character. I acknowledge that the impact would not extend beyond LLCA 8.1 to affect a wider area of landscape. Nonetheless, I judge the magnitude of change as medium and the significance would be moderate to moderate/major adverse, even after mitigation. In my view, the effect would not be as low as the minor/moderate or minor adverse significance of effect identified by the LVIAs, which the appellants suggest would be considered acceptable and would not constitute an overall 'harm' to the landscape.
31. As I have indicated, the only section of the appeal sites that falls within LLCA 8.2 is the western section of appeal site B, the development of which would be constrained by its ecological value. Therefore, I give little weight to the view set out in the FLA regarding LLCA 8.2 that there may be potential for some modest, small scale development associated with the existing built form at Peel Common.
32. I consider overall that the proposals would each cause significant harm to the landscape of the area.

*Visual impact*

33. There is no dispute that the area from which the proposed developments would potentially be visible, the visual envelope, would be limited. This is due to a combination of the flat topography of the surroundings and the effects of vertical elements such as neighbouring settlement edges and some tall vegetation. As a result, the visual receptors identified by the Council and the appellants are relatively close to the appeal sites and the associated assessments of visual effects provided by those parties are broadly comparable, finding a number of adverse impacts of moderate or greater significance.
34. As regards the users of Newgate Lane, I consider them to be of medium sensitivity to change, consistent with the position set out in the LVIAs and by

- the Council. However, the proposed development would significantly alter views eastwards. Currently long views can be enjoyed from some vantage points across relatively open countryside, Newgate Lane East being low profile infrastructure, towards the tree lined edge of Bridgemary and the 'big skies' noted by the *Technical Review of Areas of Special Landscape Quality and Strategic Gaps* (2020)(TR). As a result of either appeal scheme on its own, residential development would become a prominent feature in the foreground of such views, notwithstanding the proposed setback beyond an area of open space between the highway and the proposed dwellings. From some vantage points, the long rural view would be interrupted entirely, being replaced by a short suburban view of one of the appeal schemes, which would be likely to break the existing skyline and greatly reduce the sense of space. I regard the magnitude of impact as high and the significance of impact as major/moderate adverse, in common with the Council.
35. The LVIA's did not consider vantage points along Newgate Lane East, which was under construction when the assessments were undertaken. I consider users of Newgate Lane East to be of medium sensitivity to change, in common with users of Newgate Lane. It is anticipated that the proposed buildings would be set back from Newgate Lane East beyond a strip of landscaping, within the sites and along the edge of the highway. Nonetheless, given the likely scale and disposition of the built development, I consider it likely that it would still be visible to some extent from that neighbouring road. In my judgement, when travelling between the built-up areas to the north and south, the respite provided by the surrounding countryside along Newgate Lane East is of notable value. That value would be greatly diminished as a result of either scheme. Both would foreshorten views to the west and tip the balance from a predominantly rural to suburban experience. The magnitude of impact on that receptor would be medium and the significance of impact moderate adverse.
36. Overall, I consider that the significance of the visual impact would be moderate to moderate/major adverse. It would have a significant adverse effect on the appearance of the area.
37. The FLA sets development criteria to be met in order to protect the character and quality of landscape resources, views, visual amenity, urban setting and green infrastructure. Whilst the aim of LP2 Policy DSP40 is to minimise, rather than avoid, any adverse impact, I consider that they are of some assistance when judging the extent to which there would be an impact and whether it can be regarded as being minimised. I acknowledge, that in the context of making some provision for housing land supply in the countryside, it would be unrealistic to expect the open, predominantly agricultural and undeveloped rural character of area LLCA 8.1a to be entirely protected as the FLA suggests. However, the proposals would cause significant harm in that regard. Furthermore, rather than situating the proposed developments to the east of Newgate Lane East, next to existing urban areas, the schemes would amount to the creation of substantial new pockets of urbanising built development within existing open agricultural land.
38. I conclude that, in each case, the proposal would cause significant harm to the character and appearance of the area, having had regard to the location, disposition, likely scale and landscape treatment, each would fail to minimise the adverse impact on the countryside. The proposals would conflict with LP2 Policy DSP40(ii) and (iii).

### **Highway safety**

39. The *Statement of Common Ground on Transport (SoCGT)*, agreed between the Council and the appellants, states it is agreed that the individual and cumulative impacts of the northern and southern sites would have a detrimental impact on the operation of the existing right turn lane priority junction between Newgate Lane and Newgate Lane East. Furthermore, this cannot be mitigated by priority junction improvements and so a signalised junction is proposed.
40. The proposed signalised junction would introduce a flare from 1 to 2-lanes on the northbound Newgate Lane East approach to the junction and a merge back to 1 lane some distance after the junction. Furthermore, the SoCGT indicates, in relation to southbound vehicles seeking to access Newgate Lane from Newgate Lane East across 2 lanes of on-coming traffic, the proposed signal method of control would be the provision of an indicative arrow right turn stage. Under the proposed signalling arrangement, right turn movements from Newgate Lane East into Newgate Lane could occur at three points in the cycle of the signals: firstly, turning in gaps in the free flowing northbound traffic; secondly, during the intergreen period when the northbound flow is stopped and before the Newgate Lane traffic is released; and, then if right turners are still waiting after the cycle, the indicative arrow would be triggered to allow them to turn unopposed. The SoCGT confirms that the appellants are proposing an indicative arrow arrangement rather than the provision of a fully signalised right turn stage, as the latter would operate unacceptably in terms of capacity.
41. The appellants' *Stage 1 Road Safety Audit (RSA)* identifies a potential problem with the proposed right turn lane arrangement, with reference to CD 123 of the *Design Manual for Roads and Bridges (DMRB)*. In the context of right turning traffic movements at signal-controlled junctions, CD 123 indicates that where the 85<sup>th</sup> percentile approach speed is greater than 45 mph, there is an increased risk of accidents between right-turning vehicles seeking gaps and oncoming vehicles travelling at speed. It confirms that where the 85<sup>th</sup> percentile approach speed is greater than 45 mph, right hand turns should be separately signalised. Against that background, the RSA raises the concern that higher northbound vehicle speeds (particularly in off-peak traffic conditions) may mean that gap acceptance by the drivers of right turning vehicles could lead to right-turn collisions or to sudden breaking and shunt type collisions. It recommends that, at detailed design stage, signal staging/phasing should incorporate a separately signalled right-turn into Newgate Lane and that it would be appropriate to measure northbound vehicle speeds to design signal staging and phasing arrangements accordingly.
42. DMRB CA 185 sets out the approach to vehicle speed measurement on trunk roads where existing vehicle speeds are necessary to set the basis for the design of signal-controlled junctions. CA 185 confirms that 85<sup>th</sup> percentile vehicle speeds shall be calculated where designs are to be based on measured vehicle speeds. It is common ground that, whilst this standard is intended for use in relation to trunk roads, in the absence of any other reference, it can be used to guide the measurement of vehicle speeds on other roads, such as Newgate Lane East.
43. The SoCGT identifies 3 speed surveys whose results are relevant to the consideration of northbound speeds on Newgate Lane East. They were

undertaken in: September/October 2018; February/March 2020; and November 2020. All three surveys include measurements undertaken at weekends, contrary to the CA 185 protocol which indicates that speed measurements shall not be undertaken at weekends. Nevertheless, they were not limited to weekend measurements. Each survey included measurements on other days of the week, and I have not been provided with any evidence to show that the 85<sup>th</sup> percentile speeds derived from the surveys are not reasonably representative of the weekdays surveyed. However, the last survey was carried out during a period affected by movement restrictions associated with the coronavirus pandemic and the recorded average flow rates are noticeably lower than those recorded at the same times of day in the other two surveys. I consider that, under these circumstances, greater weight is attributable to the results of the earlier two surveys.

44. CA 185 indicates that a minimum number of 200 vehicles speeds shall be recorded in the individual speed measurement period and speed measurements should be taken outside of peak traffic flow periods. The peak hours identified by the *Transport Assessments* submitted in support of the appeal planning applications are 08:00-09:00 hrs (AM peak) and 17:00-18:00 hrs (PM peak). Whilst CA 185 indicates that non-peak periods are typically between 10:00-12:00 hrs and 14:00-16:00 hrs, I share the view of the Highway Authority (HA) that this does not rule out consideration of other non-peak periods, so long as a minimum number of 200 vehicles speeds are recorded in the individual speed measurement period as required by CA 185. Having regard to the results of the September/October 2018 and February/March 2020 surveys for northbound traffic on Newgate Lane East, in addition to the typical periods identified above, the period from 05:00-06:00 hrs meets these criteria, falling outside of the peak hours and having a recorded average flow greater than 200 vehicles.
45. The September/October 2018 and February/March 2020 survey results record 85<sup>th</sup> percentile speeds in the periods 10:00-12:00 hrs and 14:00-16:00 hrs in the range 41 mph-44.8 mph when a wet weather correction is applied. The upper end of this range being only marginally below 45 mph. In the period 05:00-06:00 hrs the results exceeded 45 mph. CA 185 indicates that where there is a difference in the 85<sup>th</sup> percentile speeds derived from the individual speed measurement periods, the higher value shall be used in the subsequent design.
46. I give little weight to the view of the appellants that the introduction of traffic signals, as proposed, would be likely to result in drivers being more cautious and so reduce their vehicle speeds. Even if that were the case, it is not clear that it would reduce 85<sup>th</sup> percentile speeds in the period 05:00-06:00 hrs to below 45 mph or that this undefined factor should be taken into account in the design. The appellants have suggested that in the absence of any demand over-night, the signals would revert to an all red stage, which would further slow the speeds of vehicles. However, it appears that there would be likely to be demand in the period 05:00-06:00 hrs. Furthermore, the HA has confirmed, for a number of reasons, that is not the way multi-arm junctions are set up on its network. Firstly, for junction efficiency, the signals would be expected to rest on green on Newgate Lane East, allowing traffic to proceed unimpeded on the main arm. Secondly, this approach reduces the likelihood of drivers, who wrongly anticipate that the lights will turn from red to green on their approach,

- proceeding without slowing and colliding with others. In light of the HA's established approach, I give little weight to the appellants' suggestion.
47. I consider that the proposals, which would not include separate signalisation of the right-hand turn, would conflict with CD 123.
48. The operation of the existing priority junction involves some drivers turning right from Newgate Lane East into Newgate Lane across a single northbound lane and there is no dispute that at present the junction operates safely. However, the proposed junction arrangement would give rise to the possibility of right turning vehicles gap-seeking across 2 opposing lanes, a practice which the HA considers would be unsafe. I note that Rule 180 of the *Highway Code* indicates that right turning drivers should wait for a safe gap in oncoming traffic. However, the basis of the HA's concern is that a right turning driver may not be able to see an oncoming nearside northbound vehicle, due to screening by offside northbound vehicles, until it is too late to avoid a conflict. The Rule 180 illustration is of a single opposing lane and it does not grapple with the potential for unsighted vehicles in a two opposing lanes scenario. In support of its concern, the HA has identified other junctions where the frequency of accidents involving right turning vehicles has been reduced by moving from a situation where gap-seeking across 2 lanes is allowed to a fully signalised right turn phase.
49. With respect to the modified junctions drawn to my attention by the HA, I agree with the appellants that, in the absence of data with respect to traffic flows, speeds and percentage of right turners at those other junctions, it cannot be determined that they are directly comparable to the appeal junction in those respects. However, nor can it be determined that they are not. Nonetheless, the improved accident record at those other junctions following the introduction of a fully signalised right turn phase appears to me to support, for the most part, the HA assessment that the practice of gap-seeking across 2 lanes was previously a contributory factor to the incidence of accidents<sup>5</sup>. In relation to this matter, I give greater weight to the assessment of the HA, as it is likely to be more familiar with the historic operation of its network, than that of the appellants' highway witnesses.
50. The appellants consider that an arrangement which allows vehicles turning right across two opposing lanes by gap-seeking is common. In support of that view, they have identified 2 junctions in the area where the HA has not prevented right turning vehicles from crossing 2 lanes without signalling: A27/Ranvilles Lane; and, A27/Sandringham Road. However, the HA has indicated that there is a history of accidents associated with right turn manoeuvres at the A27/Ranvilles Lane junction, the most recent having occurred in 2020, and the junction will be taken forward on the HA's provisional list for safety remedial measures during 2021/2022. The A27/Sandringham Road junction is located close to the point at which the speed limit reduces from 40 mph to 30 mph on the A27. Furthermore, Sandringham Road is a cul-de-sac serving far fewer dwellings than would be the case at Newgate Lane as a result of either of the appeal A or B schemes, and so the number of daily or peak hour right turning movements associated with it would be likely to be much lower than the appeal junction. To my mind, the circumstances associated with these two junctions do not lend support to the appeal schemes.

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<sup>5</sup> Whether a 3-year or 10-year accident record period is considered.

51. The appellants argue that in circumstances where a vehicle is waiting at the proposed junction for an approaching northbound offside vehicle to pass before turning right onto Newgate Lane, it is likely that a nearside vehicle screened from view by that offside vehicle would also have passed when the waiting vehicle starts to cross the lanes. To my mind, that would not necessarily be the case, as it would depend on the degree to which the pair of northbound vehicles are staggered and their relative speeds. Some screened vehicles may be slowing to turn left into Newgate Lane causing a right turning vehicle to pause in the offside lane when that previously screened nearside vehicle comes into view and that would potentially bring it into conflict with other approaching offside vehicles. Furthermore, it is foreseeable that right turning drivers seeking gaps may be faced with a stream of traffic in both opposing lanes and with some variation in approach speeds. A nearside vehicle moving past an offside stream of traffic may be unsighted until a late stage and may be closing the gap faster than the right turning driver had anticipated, leading to conflicting movements.
52. With reference to the appellants' *Transport Assessment Technical Note-Junction Modelling Results (TATN)*, by the 2024 design year, the cumulative impact of each appeal scheme and other developments would be likely to result in a marked increase in the total number of right turning vehicles into Newgate Lane. Furthermore, the appellants' traffic modelling predicts that in the AM peak there would not be any suitable gaps in free-flowing northbound traffic for right turning vehicles to cross. However, the proposed signalling arrangement would not prevent drivers from gap-seeking and they may still attempt to do so, if they thought that they could get across, rather than waiting for the intergreen period or the indicative arrow. The modelling predicts that in the PM peak almost all of the right turning traffic would cross in gaps in free-flowing northbound traffic.
53. Against this background, I share the concern of the HA that right turning vehicles gap-seeking to cross 2 oncoming lanes at the proposed junction poses a far greater risk of collisions than the existing arrangement and a significant risk to highway safety.
54. I conclude that the proposed junction arrangement, whether one or both of the appeal schemes were to proceed, would have an unacceptable impact on highway safety. Furthermore, in my view, this harm could not be reduced to an acceptable level through the imposition of a condition(s). As I have indicated, the Council and appellants agree that a fully signalised right turn stage would operate unacceptably in terms of capacity. The proposals would conflict with LP2 Policy DSP40(v), which seeks to ensure that development would not have any unacceptable traffic implications, and it would not fit well with the aims of LP1 Policy CS5(3) insofar as it supports development which does not adversely affect the safety of the local road network. These Policies are consistent with the Framework, which indicates that development should only be prevented or refused on highway grounds in limited circumstances, including if there would be an unacceptable impact on highway safety. This weighs very heavily against the schemes.

***Sustainably located, with reference to accessibility***

55. LP1 Policy CS15 indicates that the Council will promote and secure sustainable development by directing development to locations with sustainable transport

- options. LP1 Policy CS5 indicates that development proposals which generate significant demand for travel and/or are of high density, will be located in accessible (includes access to shops, jobs, services and community facilities as well as public transport) areas that are or will be served by good quality public transport, walking and cycling facilities. LP2 Policy DSP40(ii) seeks to ensure that proposals are sustainably located adjacent to the existing urban settlement boundaries.
56. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and identifies that this should be taken into account in decision-making. I acknowledge that the appeal sites are in the countryside. However, they are situated in a relatively narrow countryside gap between urban areas, rather than a larger rural area where opportunities for sustainable transport could reasonably be expected to be limited. In any event, consistent with Development Plan Policies CS15, CS5 and DSP40, the Framework also indicates that significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
57. The appeal sites are not near to, but are set well apart from: the western, urban area boundary of Bridgemary, as defined by the *Gosport Borough Local Plan 2011-2029 Policies Map*, which is to the east of the appeal sites on the far side of an area of agricultural land that adjoins the eastern side of Newgate Lane East; and, further from the southern settlement boundary of Fareham, which is defined by the LP2 Policies Map Booklet and is located some distance further north at the edge of HMS Collingwood and Speedfields Park. Peel Common does not have a defined urban settlement boundary. As such, I consider that the sites are not adjacent to any existing urban settlement boundary, contrary to the requirement of LP2 Policy DSP40(ii).
58. I acknowledge that the Council appears to have taken a flexible approach to the 'adjacency' requirement in a number of other cases. However, in the cases drawn to my attention, with the exception of the site to the south of Funtley Road, development has taken place or been approved between the application site and the nearest existing urban settlement boundary. In the case of the site to the south of Funtley Road, it abuts a highway on the opposite side of which is some of that other development and the site boundary is a relatively short distance across undeveloped land from an existing urban settlement boundary. The circumstances are not directly comparable to those in the cases before me, in relation to which the sites would be set further apart across undeveloped land from the nearest existing urban settlement boundary. In any event, each case must be considered primarily on its own merits and in my view, the Council's approach elsewhere would not justify harmful development of the appeal sites. I give little weight to those decisions of the Council. Furthermore, appeal decision Ref. APP/L3625/X/16/3165616 considered adjacency in the context of the relationship between a highway and gates set back from it by around 1 metre. The circumstances are not comparable to those in the cases before me and are of little assistance.
59. I turn then to consider the accessibility of the sites with reference to modes of transport. The *National Travel Survey, 2019* (NTS), identifies, amongst other things, the average trip length and duration in England by all modes of travel for the trip purposes of: commuting; education; personal business; shopping; sport (participate); and, entertainment/public activity. There are a range of

- employment, education, retail, health, sport, and leisure uses well within those average distances and durations of the appeal sites. This indicates that there are likely to be some opportunities for residents of the proposed developments to travel less when compared to the national average journey distances and durations, and in this context, the locations of the appeal sites limit the need to travel. However, the NTS 'all modes of travel' includes, amongst other modes, car travel and so it does not automatically follow that the proposed developments would be served by good quality public transport, walking or cycling facilities.
60. The *Manual for Streets* indicates that walkable neighbourhoods are typically characterised by having a range of facilities within around 800 metres walking distances of residential areas which residents may access comfortably on foot. However, it indicates that this is not an upper limit and walking offers the greatest potential to replace short car trips, particularly those under 2 kilometres. This is echoed by the Department for Transport *Local Cycling and Walking Infrastructure Plans (2017)*, which indicates that for walking, 'the distances travelled are generally...up to 2 kilometres'.
61. The Institute of Highways and Transportation's (now CIHT) *Guidelines for Providing for Journeys on Foot, (2000)* (PfJoF) gives more detailed guidance, setting out, with reference to some common facilities, suggested desirable, acceptable and preferred maximum walking distances which range up to a preferred maximum of 2 kilometres for some facilities. The approach is consistent with CIHT's more recent *Planning for Walking, April 2015* (PFW), which indicates that most people will only walk if their destination is less than a mile away (equivalent to around 1.6 kilometres) and about 80% of journeys shorter than 1 mile are made wholly on foot, the power of a destination determining how far people will walk to get to it. To illustrate the point it indicates that while for bus stops in residential areas, 400 metres has traditionally been regarded as a cut-off point, people will walk up to 800 metres to get to a railway station, which reflects the greater perceived quality or importance of rail services.
62. Having regard to the Department for Transport's NTS (Table NTS0303-2020 update), there have been no significant changes in the average walking trip length in the period 2002-2019. To my mind, this indicates it is unlikely that attitudes towards walking trip length have altered to any great extent since the publication of PfJoF. This is consistent with the position taken by my colleague who dealt with appeal Ref. APP/A1720/W/19/3230015, which related to a site elsewhere, in Portchester. I am content therefore, that the PfJoF guidance on acceptable walking distances is not out of date and it provides a reasonable basis for the assessment of whether, having regard to the locations of the appeal sites, walking can be regarded as a genuine choice of transport modes. In addition, PFW indicates that propensity to walk is not only influenced by distance, but also by the quality of the experience, having regard to factors such as the attractiveness and safety of the route.
63. I note that the Council's position regarding the accessibility of the sites is not based on an objection in relation to that matter raised by the Highway Authority, but rather an assessment undertaken by a planning professional with reference to PfJoF, amongst other things. In my view, it does not follow that the weight attributable to the Council's assessment should be reduced. As reported by the appellants, the PfJoF states it is the task of the professional

- planner or engineer to decide if a lower standard is acceptable in given circumstances.
64. There is no dispute that there are a range of services and facilities within 2 kilometres of the appeal sites. However, to my mind, in the absence of any consideration of the 'power of the destinations' and the quality of the experience that is of little assistance. Applying the PfJoF approach, which reflects the 'power of destination', facilities and amenities within its 'acceptable' walking distances of the southern and linked appeal sites are limited to a primary school, a church, and a recreation ground. Within its 'preferred maximum' walking distances there are additionally a college campus (CEMAST), a limited number of small shops and a pub in Bridgemary, an employment area (HMS Collingwood) and four other schools.
65. However, the appeal sites only fall within the catchment area of one of the five schools, Crofton Secondary School, which is barely within the preferred maximum walking distance. Whilst I understand that Crofton Anne Dale Infant and Junior School, which would serve the appeal sites, is within the maximum walking distances for schools identified by the Department for Education, it falls outside the PfJoF preferred maximum walking distances.
66. Although PFW indicates that in residential areas, 400 metres has traditionally been regarded as a cut-off point, the CIHT's more recent *Buses in Urban Developments, January 2018* (BUD) provides more detailed guidance. It identifies maximum walking distances between developments and bus stops with the intention of enabling the bus to compete effectively with the car and to benefit a wide range of people with differing levels of motivation and walking ability. It recommends a maximum walking distance of 300 metres to a bus stop served by a service which is less frequent than every 12 minutes.
67. The SoCGT indicates that the closest bus stop to the appeal sites is on Newgate Lane East and only the southern site would meet that BUD recommendation. Furthermore, the buses return approximately with a frequency of every 75 minutes in each direction and the first northbound bus in the morning, towards Fareham, departs from the bus stop at 09:12 hrs. Notwithstanding that the bus trip duration to the train station may be shorter than the national average trip time by local bus of 36 minutes, to my mind, the start time and frequency of the service would limit the attractiveness of the service as far as northbound commuters are concerned. Whilst there is a bus stop on Tukes Avenue served by a more frequent service, it is significantly further away from the sites than the maximum walking distance for high frequency services recommended by BUD.
68. The SoCGT indicates that the closer of the 2 appeal sites is some 3.7 kilometres from Fareham Railway Station, a distance well beyond the 800 metres identified by PFW.
69. I note that the PfJoF was one of the documents that informed the accessibility standards set out in the Council's *Fareham Local Plan 2037 Background Paper: Accessibility Study 2018*, the application of which in the cases before me appears not to result in a significant difference in outcome compared with the application of the PfJoF guidance.
70. The appellants have applied a Walking Route Audit Tool to the local walking routes, which assesses the attractiveness, comfort, directness, safety, and

coherence of the routes. Whilst a number of the findings are disputed by the Council, I consider that the current condition of the likely route east of the sites to the limited number of shops and the pub referred to in Bridgemaury is of greatest concern. That walking route would involve crossing Newgate Lane East and walking along Brookers Lane. However, difficulties crossing Newgate Lane East, due to the speed and volume of traffic, would be satisfactorily addressed by the proposed provision of a Toucan crossing, funded by a contribution secured by the UUB. Currently, the character of the initial section of Brookers Lane would be likely to dissuade users, due to a lack of street lighting and the potential for people to conceal themselves from view from approaching walkers in trees along the southern side of the route, giving rise to potential safety concerns. However, I consider that these matters could be satisfactorily addressed through the provision of unobtrusive lighting and fencing along the southern side of the route, which would be unlikely to have a material adverse impact on the character or appearance of the locality and could be secured by condition. I acknowledge that these improvements may be of some benefit to the wider community, not just residents of the appeal sites, to which I attribute limited weight.

71. In my judgement, the quality of local walking routes could be made acceptable. However, applying the PfJoF and more recent BUD guidance on walking distances to destinations, the number and range of facilities and amenities within the ranges identified would be limited. I consider overall that the accessibility of the area by walking would be poor and, for the most part, walking cannot be regarded as a genuine choice of transport mode.
72. The site subject of previous appeal decision Ref. APP/A1720/W/19/3230015, was found to satisfy LP2 Policy DSP40(ii). However, the factors taken into consideration in relation to that matter included, amongst other things, that the site was well related to the existing urban settlement boundary for Portchester and close to many other dwellings in Portchester, and accessibility to local services and facilities would be similar to that for many of the existing residents of the area. Those circumstances are not directly comparable to those in the cases before me. The appeal sites are not well related to an existing urban settlement boundary or close to dwellings within one. Whilst accessibility to local services and facilities would be similar for existing residents of Peel Common, it is a small settlement relative to which each of the appeal schemes would be larger in terms of households. Under the circumstances, I consider that the policy finding of the previous appeal decision is of little assistance in these cases.
73. Within 5 kilometres of the appeal sites, which is a distance commonly regraded as reasonable cycling distance, there is a much greater range and number of services, facilities, amenities, and employment sites. Furthermore, there are shared cycle pedestrian/cycle routes in the vicinity of the appeal sites which would facilitate access by bicycle to the areas to the north, south, east, and west of the sites. I consider therefore that the sites would be served by good quality cycling facilities and cycling could be regarded as a genuine choice of transport modes. However, having regard to the NTS for 2019, in comparison with 250 trips per person per year associated with walking, only 16 trips per person per year were associated with cycling. To my mind, it is likely therefore, that relatively few future residents of the appeal sites would cycle, reducing the weight attributable to this factor.

74. As I have indicated, the bus services available within the maximum walking distances recommended by BUD are very limited and the nearest train station is located well outside the PfJoF preferred maximum walking distance. I acknowledge that the sites would be within reasonable cycling distances of Fareham Train Station and residents could drive there by car. Nonetheless, I consider overall that the sites would not be well served by good quality public transport, the accessibility of the area by public transport would be poor and, for the most part, it cannot be regarded as a genuine choice of transport modes.
75. The Framework indicates that in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be-or have been-taken up, given the type of development and its location. A Travel Plan for each site has been agreed by the HA. However, in my view, it does not automatically follow that the appeal sites would be sustainably located with reference to accessibility. The *Planning Practice Guidance* (PPG) indicates that the primary purpose of a Travel Plan is to identify opportunities for effective promotion and delivery of sustainable transport initiatives, for example walking, cycling, public transport and tele-commuting, in connection with both proposed and existing developments and through this to thereby reduce the demand for travel by less sustainable modes.
76. The proposed Travel Plan measures include, amongst other things, the provision of: information to promote sustainable modes of travel; electric vehicle charging/parking facilities on the sites; a Travel Plan Coordinator as well as contributions towards: the improvement of the Newgate Lane East crossing at Woodcote Lane/Brookers Lane; the provision of shared pedestrian/cyclist infrastructure along parts of the routes between the appeal sites and local schools; and, supporting the use (travel vouchers for residents) and operation of the existing limited bus service in the vicinity of the sites for a number of years. Having regard to these matters, I am satisfied that a number of appropriate opportunities to promote sustainable transport modes have been provided for, in accordance with the aims of LP1 Policy CS15 and the Framework. However, as identified above, I consider that the attractiveness of the existing bus service to commuters would be limited and, in my view, this casts significant doubt over the indicative Travel Plan target which anticipates an increase in bus service use, notwithstanding some provision for travel vouchers.
77. I conclude that the appeal sites would be in a location with some, albeit limited, sustainable transport options and in this respect would accord with LP1 Policy CS15. However, the limitations are such that they would not be in an accessible area, with particular reference to public transport and walking facilities, and I do not regard the sites as being sustainably located adjacent to an existing urban settlement boundary. Insofar as they seek to ensure that development is sustainably located with reference to accessibility, I consider overall that the proposals would conflict with LP1 Policy CS5, LP2 Policy DSP40 and the Framework.

### ***Spatial development strategy***

78. The reasoned justification for LP1 Policy CS22 indicates that gaps between settlements help define and maintain the separate identity of individual

- settlements. It states that Strategic Gaps do not have intrinsic landscape value but are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green infrastructure/green corridors. The Policy indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
79. The appellants place some reliance on the proposed allocation of land for development in the Fareham-Stubbington Gap in the Regulation 18 consultation draft of the emerging *Fareham Local Plan 2036* (LPe). This included allocation HA2 for residential development on land between Newgate Lane East and Bridgemary, within the Fareham-Stubbington Gap. Whilst the Regulation 19 draft of the LPe did not include that allocation, it was based on the assumed imposition of Government's proposals to introduce a new Standard Method, which was not subsequently supported. However, going forward, there is no certainty that the proposed allocation of HA2 will be reinstated by the Council. Furthermore, even if it were, that proposed allocation was the subject of objections at the earlier stage and there is no dispute that the emerging plan is at a relatively early stage towards adoption. Under the circumstances, I give little weight to the possibility that proposed allocation HA2 would form part of the LPe when adopted.
80. The appeal sites fall within the Fareham-Stubbington Gap. The TR indicates that the purpose of this gap is to avoid coalescence between the settlements of Fareham and Bridgemary with Stubbington and Lee-on-the-Solent. Drawing a straight line east-west across the gap between Stubbington and Bridgemary, the appellants have estimated that the appeal schemes would reduce the gap from some 1.6 km to around 1.1 km. However, to my mind, that cross-country approach does not represent the manner in which the gap is likely to be experienced and, as a result, generally understood.
81. Consistent with the TR, I consider that a key vehicle route between the settlements of Fareham and Stubbington from which the Strategic Gap is experienced is along Newgate Lane East (between Fareham and Peel Common Roundabout)/B3334 Gosport Road (between Peel Common Roundabout and Marks Road, Stubbington). Along that route travellers leave behind the urban landscape of Fareham at HMS Collingwood and Speedfields Park and travel to the edge of Stubbington, via Peel Common Roundabout, through an area which includes the appeal sites and is predominantly characterised by undeveloped countryside. The Strategic Gap designation washes over some development, which includes Newlands' Solar Farm, Peel Common Wastewater Treatment Works (WWTW) and the settlement of Peel Common. However, along the route identified, intervening planting prevents the WWTW from being seen and limits views of the low-profile solar farm to glimpses. Furthermore, I consider that, when seen from those highways to the east and south, 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.
82. In each case, the proposals would involve substantial development to the east of Peel Common and, as identified above, it would be sufficient to tip the balance of the character of the area between Peel Common, Bridgemary and Fareham from predominantly rural to suburban. Whilst Fareham, Peel Common and Bridgemary would remain physically separate, the contribution of this area

to the sense of separation provided by the Strategic Gap would be greatly diminished. I acknowledge that the proposals would not materially alter the experience of the Strategic Gap along the B3334 Gosport Road, between Peel Common and development at Marks Road, as they would not be visible from there. However, the appellants have estimated that 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 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.

83. I consider overall that the proposals would cause significant harm to the integrity of the Fareham-Stubbington Gap and the physical and visual separation of settlements, with particular reference to the experience of travellers along the Newgate Lane East section of the Newgate Lane East/B3334 Gosport Road key route, contrary to the aims of LP1 Policy CS22.
84. Furthermore, in my judgement, the impact on the integrity of the Strategic 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 an existing urban settlement boundary and Peel Common were to remain a small, isolated ribbon of development within the gap. The proposals would fail to minimise any adverse impact on the Strategic Gap, contrary to the aim of LP2 Policy DSP40(iii).
85. There is no dispute that the proposals would accord with criterion (i) of LP2 Policy DSP40, being relative in scale to the demonstrated five-year housing land supply shortfall. Turning then to criterion iv), which requires a demonstration that the proposals would be deliverable in the short term. The current tenant of appeal site A has suggested that the formal procedures associated with the surrender of the agricultural tenancy may delay implementation of that scheme. However, based on the timeline and formal procedures for obtaining possession outlined by the appellants, it appears to me that delivery in the short term would be possible<sup>6</sup>. In any event, this matter could be satisfactorily addressed, in relation to both sites, through imposition of conditions that required reserved matters applications to be made within 12 months of the grant of planning permission and the commencement of development within 12 months of the approval of reserved matters, as suggested by the appellants. Under the circumstances, I am satisfied that the proposals would not conflict with criterion iv) of LP2 Policy DSP40. Nonetheless, they would conflict with criteria ii), iii) and v) and I consider overall that each proposal would conflict with LP2 Policy DSP40 taken as a whole.
86. I conclude that each of the schemes, which would conflict LP1 Policy CS22 and LP2 Policy DSP40, would not accord with and would undermine the Council's Spatial Development Strategy.

### ***Housing land supply***

87. The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated

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<sup>6</sup> Michelmores LLP letter dated 20 January 2021 and Lester Aldridge LLP letter dated 3 February 2021.

against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum. Furthermore, having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period. As I have indicated, the Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply. However, they agree on either basis that the shortfall is material and it is not necessary to conclude on the precise extent.

88. A significant proportion of the difference between the supply figures of the Council and the appellants is associated with applications with a resolution to grant planning permission (709 units) and allocations (556 units).
89. In respect of the majority of the sites with resolutions to grant planning permission, which date from 2018, it remains necessary, before planning permission could be granted in each case, for the Council to complete Appropriate Assessment (AA) to establish whether the scheme would have a significant effect upon European Protected Sites. To inform the AA, it is necessary for the developers to demonstrate that their schemes would not increase the levels of nitrates entering the Solent. In order to facilitate that process, in September 2020, the Council established a legal framework through which developers/applicants can purchase nitrate credits associated with land use at Little Duxmore Farm (LDF). However, at the Inquiry, the Council was unsure whether there would be sufficient capacity at LDF to provide mitigation in relation to all the identified sites and whilst it is seeking to secure additional capacity elsewhere, the associated negotiations are not yet complete. Furthermore, since September 2020, only a relatively small number of dwellings have been taken through this process culminating in the grant of planning permission. With respect to the other sites, which together account for over 500 units, I consider that in the absence of favourably completed AAs there is significant doubt about the deliverability of housing within the five-year period on those sites. Furthermore, AA is not the only issue. In a number of the cases, while some progress has been made, necessary planning obligations have yet to be formally secured. This adds to the uncertainty.
90. The Welborne allocation accounts for 450 units included in the Council's assumed supply figure. The site was subject to a resolution to grant outline planning permission for up to 600 dwellings in October 2019, subject to planning obligations being secured. Although the Council expected the planning obligations to be secured pursuant to section 106 of the *Town and Country Planning Act 1990* by the end of the summer 2020, this was not achieved. In December 2020, the developer submitted amended plans for the site. Whilst in January 2021, the Council resolved to grant planning permission for the revised scheme, it would also be subject to planning obligations and a pre-commencement condition would be imposed to ensure that funding had been secured for the improvement of junction 10 of the M27. At the Inquiry, the Council confirmed that whilst funding sources have been identified, not all the necessary agreements are in place to secure the funds. In light of the limited progress made since October 2019 and the outstanding areas of

uncertainty, I consider it likely that housing delivery on that site within the five-year period will fall well short of that assumed by the Council.

91. Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic<sup>7</sup>.
92. The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come.
93. The appellants anticipate that around 123 of the 190 proposed appeal dwellings could be completed within the current five-year period. Against this background, I consider it likely that each of the appeal schemes would make a modest contribution towards reducing the significant shortfall in housing land supply. Having had regard to other appeal decisions drawn to my attention<sup>8</sup>, I give those contributions substantial weight.

### **Other matters**

#### *Planning obligations*

94. Each of the schemes is supported by a formally completed unilateral undertaking: appeal site A-UUA; and appeal site B-UUB. Amongst other things, they include provisions for: a Solent Recreation Mitigation Strategy contribution; on-site open space and play area provision and maintenance contributions; an education contribution; provisions to secure on-site Affordable Housing delivery, sustainable travel measures as well as the implementation of a Travel Plan. UUB also makes provision for: the implementation of a Chamomile Management Plan, for the purpose of conserving the ecological features in the Chamomile and Meadow areas of the site, consistent with the aims of LP2 Policy DSP13; and, a Toucan crossing contribution. Having had regard to the Council's *Community Infrastructure Levy Regulations Compliance Statement, February 2021*, I consider that the UUs would accord with the provisions of Regulation 122 of the *Community Infrastructure Regulations 2010* and the tests of obligations set out in the Framework. Furthermore, I conclude that the infrastructure provisions referred to above would accord with the aims of LP1 Policy CS20.
95. With reference to the ecological assessments submitted in support of the applications, the appellants have indicated that, subject to mitigation measures which would be secured either by the submitted UU's or by condition, the schemes would each provide moderate ecological benefits for the sites, consistent with LP1 Policy CS4 and LP2 Policy DSP13. Furthermore, measures would be incorporated in the design of the schemes to limit energy and water consumption as well as carbon dioxide emissions, which could be secured by condition and would amount to minor environmental benefits, consistent with

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<sup>7</sup> Statements of Common Ground, January 2021 (paragraphs 7.14).

<sup>8</sup> Such as APP/A1530/W/19/3223010, APP/G1630/W/18/3210903, APP/E5900/W/19/3225474, APP/N1730/W/18/3204011 and APP/G1630/17/3184272.

LP1 Policy CS16. I have no compelling reason to take a different view. However, in my judgement, they do not weigh significantly in favour of the schemes, as the benefits would be only moderate/minor and the Framework commonly requires the provision of net gains for biodiversity, minimisation of energy consumption and the prudent use of natural resources.

96. UUC would secure off-site mitigation for the loss of a low use Solent Wader and Brent Goose site. Having regard to the measures secured by UUA, UUB and UUC and with reference to the 'Shadow Habitat Regulations Assessments' submitted in support of the applications, the appellants have indicated that the proposals would not have an adverse effect on the integrity of any European Protected Sites, consistent with the aims of LP2 Policies DSP14 and DSP15, and this would weigh as neutral in the planning balance. These matters are not disputed by the Council.
97. It is common ground that there is an unmet Affordable Housing need in Fareham Borough. The shortfall appears to be sizeable. Looking forward, the Council's adopted *Affordable Housing Strategy (2019)* identifies a need for broadly 220 Affordable Homes per annum over the period to 2036. This can be compared to the delivery of an average of 76 Affordable Homes per annum in the period 2011-2019, well below the need identified for that period by the Council's *Housing Evidence: Overview Report (2017)*. 40% of the proposed dwellings in each case would comprise Affordable Housing, consistent with the requirements of LP1 Policy CS18. Furthermore, I understand that the commercial profits of Bargate Homes Ltd, which is owned by Vivid and has contractual control of both sites, are reinvested in Vivid's wider Affordable Housing Programme. I consider that the proposals would amount to meaningful contributions towards addressing the identified need and the Affordable Housing benefits attract substantial weight in each case.
98. The Council considers that the public open space provision shown on the illustrative masterplans submitted in support of the applications would be sufficient to meet the requirements of LP1 Policy CS21 and I have no reason to disagree. Whilst I acknowledge that the proposed public open space may be of some value to existing local residents, given the accessibility of the countryside thereabouts, I consider that any benefit in that regard would be small and I give it little weight.

*Economic benefits*

99. The Framework gives encouragement to development that would support economic growth. The proposals would be likely to give rise to a range of economic benefits. For example, the appellants have estimated that the proposed households would be likely to generate expenditure in the region of £6.4 million per annum, some of which would be spent locally. Furthermore, the proposals could support an estimated 191 jobs during the three-year build programme and could generate an additional £33.8 million of gross value added for the regional economy during that period. The proposals would help to support the growth of the economy, which has been adversely affected by the current coronavirus pandemic. I give the economic benefits likely to result from the proposals in each case substantial weight.

*Best and most versatile agricultural land*

100. Appeal site B contains land classified as best and most versatile (BMV) agricultural land, which would be lost as a result of the scheme, contrary to the aims of LP1 Policy CS16, which seeks to prevent the loss of such land. However, with reference to the Framework, which indicates that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the economic and other benefits of BMV agricultural land, I consider that LP1 Policy CS16 is unduly onerous. Furthermore, as BMV agricultural land makes up only a very small proportion of the site, I share the view of the appellants that the weight to be given to the loss is very limited.

*Privacy*

101. At present, Hambrook Lodge occupies an isolated position in the countryside, set well apart from other dwellings. In this context the proposed developments on land adjacent to that property would be likely to have some effect on the privacy of the existing residents. However, the elevations of the dwelling that contain the majority of its habitable room windows are set back from the boundaries shared with the appeal sites. I consider that it would be possible to ensure, through careful design and layout of the schemes controlled at the reserved matters stage, that reasonable levels of privacy would be maintained in keeping with the aims of LP1 Policy CS17.

*Community services and facilities*

102. I do not share the concerns raised by a number of residents of the Borough of Gosport that the proposals would adversely affect their community services and facilities. As indicated above, it is likely that spending associated with the schemes would benefit the local economy. As regards facilities, I understand that the appeal sites are not within the catchment area of Gosport schools. Whilst some future residents may wish to use the recreation ground situated to the southeast on the other side of Newgate Lane East, there is no compelling evidence before me to show that the numbers would be large or that such activity would be problematic.

***Planning balance***

103. The Framework indicates, with reference to succinct and up-to-date plans, that the planning system should be genuinely plan-led. For decision making this means approving development proposals that accord with an up-to-date Development Plan without delay. The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites and so in these cases the relevant policy for determining the acceptability of residential development on the site is LP2 Policy DSP40. I consider that each of the schemes would conflict overall with LP2 Policy DSP40. However, in these cases, that is not the end of the matter.
104. LP1 Policy CS2 sets out the housing development needs in the plan period, and Policy CS6 establishes the settlements and allocations to deliver development needs. However, Policy CS2, which pre-dated the publication of the Framework, does not purport to represent an up-to-date Framework compliant assessment of housing needs. The housing requirement set out in the Development Plan has not been reviewed within the last 5 years and so the

five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This generates a higher figure. To my mind, it follows that LP1 Policies CS2 and CS6 are out-of-date. Furthermore, against this background, I consider that the weight attributable to conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6, which place strict controls over development outside settlement boundaries, is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements<sup>9</sup>.

105. Furthermore, as the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, under the terms of paragraph 11 of the Framework it follows that the policies which are most important for determining the appeals are deemed out of date. The Framework indicates that decisions should apply a presumption in favour of sustainable development and, where the policies which are most important for determining the application are out of date, this means granting planning permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole; or, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. This approach is reflected in LP2 Policy DSP1.
106. Under these circumstances, I consider that little weight is attributable to the identified conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6. This is reinforced by my earlier finding that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies would be reduced.
107. LP2 Policy DSP40 is also deemed out of date for the purposes of paragraph 11 of the Framework. However, I consider, for a number of reasons, it does not automatically follow that conflicts with this Policy also attract little weight, contrary to the approach of my colleague who dealt with appeal decision Ref. APP/A1720/W/18/3209865.
108. Firstly, the DSP40 contingency seeks to address a situation where there is a five-year housing land supply shortfall, by providing a mechanism for the controlled release of land outside the urban area boundary, within the countryside and Strategic Gaps, through a plan-led approach. I consider that in principle, consistent with the view of my colleague who dealt with appeal Ref. APP/A1720/W/18/3200409, this approach accords with the aims of the Framework.
109. Secondly, consistent with the Framework aim of addressing shortfalls, it requires that (i) the proposal is relative in scale to the demonstrated supply shortfall and (iv) it would be deliverable in the short-term.
110. Thirdly, criteria (ii) and (iii) are also consistent with the Framework insofar as they: recognise the intrinsic character and beauty of the countryside by seeking to minimise any adverse impact on the countryside; promote the creation of high quality places and having regard to the area's defining characteristics, by respecting the pattern and spatial separation of settlements;

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<sup>9</sup> CDK5-Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37, para 63.

and, seek to ensure that development is sustainably located. They represent a relaxation of the requirements of Policies LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6 in favour of housing land supply. However, I consider that the shortfall in the Framework required five-year housing land supply, which has persisted for a number of years and is larger than those before my colleagues<sup>10</sup>, indicates that the balance they strike between those other interests and housing supply may be unduly restrictive. Under these circumstances, in my judgement, considerable, but not full weight is attributable to conflicts with LP2 Policy DSP40(ii) and (iii).

111. Fourthly, insofar as LP2 Policy DSP40(v) seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications, it is consistent with the Framework and conflict with that requirement would be a matter of the greatest weight.
112. Whilst the proposals would accord with criteria i) and iv), they would conflict with criteria ii), iii) and v), causing significant harm to the character and appearance of the area, having an unacceptable effect on highway safety, they would not be sustainably located with reference to accessibility and they would fail to minimise any adverse impact on the Strategic Gap. I have found that the proposals would conflict with LP2 Policy DSP40, undermining the Council's Spatial Development Strategy. I consider overall that these matters weigh very heavily against each of the proposals.
113. In each case the proposals would provide a mix of housing types and styles. They would make meaningful, albeit modest, contributions towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply. The appeal schemes would also be likely to provide employment opportunities and economic benefits to the area. In these respects the proposals would be consistent with the Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support economic growth. I give those benefits substantial weight. I give little weight to other identified benefits, such as the proposed measures to secure net gains for biodiversity, the minimisation of energy consumption and the prudent use of natural resources. Although I give a number of the benefits substantial weight, in my judgement, it would fall well short of the weight attributable to the harm identified.
114. I consider on balance that, in each case, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits and the schemes would not represent sustainable development under the terms of either LP2 Policy DSP1 or the Framework. In light of these findings, it is unnecessary for me to undertake an Appropriate Assessment. However, if I had done so and a positive outcome had ensued, it would not have affected the planning balances or my conclusions on these appeals.

### **Conclusions**

115. Whilst acknowledging that appeal scheme A would conform with some Development Plan policies, I conclude on balance, with particular reference to LP2 Policy DSP40, that the proposal would conflict with the Development Plan taken as a whole. Furthermore, the other material considerations in this case

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<sup>10</sup> APP/A1720/W/18/3199119, APP/A1720/W/18/3200409

would not justify a decision other than in accordance with the Development Plan. For the reasons given above, I conclude that appeal A should be dismissed.

116. Whilst acknowledging that appeal scheme B would conform with some Development Plan policies, I conclude on balance, with particular reference to LP2 Policy DSP40, that the proposal would conflict with the Development Plan taken as a whole. Furthermore, the other material considerations in this case would not justify a decision other than in accordance with the Development Plan. For the reasons given above, I conclude that appeal B should be dismissed.

*I Jenkins*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

**Mr D Lintott**

Of Counsel

He called

**Mr I Dudley**

BSc(Hons) MICFor CEnv CMLI

**Mr C Whitehead**

BEng CEng

**Mr J Mundy**

MSc IMICE

**Mr N Sibbett**

CEcol CMLI CEnv MCIEEM

**Ms J Parker**

BA(Hons) MA MRTPI

**Mr R Wright** (conditions/obligations)

**Mr N Gammer** (conditions/obligations)

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**H Hudson** (conditions/obligations)

Solicitor

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SYSTRA Ltd

Hampshire County Council

The Landscape Partnership

Adams Hendry Consulting Ltd

Fareham Borough Council

Hampshire County Council

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### FOR THE APPELLANTS:

**Mr C Boyle**

QC

He called

**Mr J Atkin**

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**Mr N Tiley**

ARTPI

**Miss M Hoskins**

BA(Hons) MCIHT

**Mr A Jones**

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**Mr D Weaver**

BA(Hons) MA MRTPI

**Mr C Marsh** (conditions/obligations)

Pegasus Group

Pegasus Group

Red Wilson Associates

Pegasus Group

WYG

Pegasus Group

Pegasus Group

### INTERESTED PERSONS:

**County Councillor P Hayre**

The Crofton Division of Fareham

**Mrs A White**

**Mr A Thomas**

**Borough Councillor J Forrest**

The Stubbington Ward

**Mr B Marshall**

**County Councillor S Philpott**

The Bridgemary Division

**Mrs A Roast**

**Borough Councillor C Heneghan**

The Stubbington Ward

Interested party

Local resident

Local resident

Interested party

Fareham Society

Interested party

Lee Residents' Association

Interested party

## DOCUMENTS

- 1 Letters notifying interested parties of appeals A and B.
- 2 Appeals notification responses
- 3 Councillor Philpott-updated proof of evidence
- 4 Ms Parker-revised appendices to proof of evidence and errata
- 5 Council-opening statement
- 6 Appellants-opening statement
- 7 Councillor Forrest-proof of evidence
- 8 Statement of Common Ground (Transport)
- 9 Fareham Society-updated proof of evidence
- 10 Councillor Philpott-updated proof of evidence
- 11 Mr Thomas-email dated 10 February 2021
- 12 Red Wilson Associates-Delay Tables Summary Note
- 13 Mr Thomas-email dated 11 February 2021
- 14 Gosport Borough Council-Additional submissions regarding the Newgate Lane South Appeals (12 February 2021)
- 15 Community Infrastructure Levy Regulations Compliance Statement (including education contributions email dated 9 November 2020 and Planning Obligations Supplementary Planning Document
- 16 Bargate Homes-Delivery Rate Update, dated 16 February 2021
- 17a Composite masterplan
- 17b Settlement boundaries proximity plan
- 17c Land south of Funtley Road Committee Report Ref. P/18/0067/OA
- 17d Consolidated conditions schedule
- 18 Mrs White-proof of evidence
- 19 Natural England guidance documents and Conservation Objectives.
- 20 Gosport Borough Council-Additional submissions regarding the Newgate Lane South Appeals (12 February 2021)-references included.
- 21 Land south of Funtley Road Committee Report Ref. P/18/0067/OA, dated 18/07/2018.
- 22 Ms Parker- response to Inquiry document 16
- 23 Council's letter withdrawing reason for refusal (h)-appeal A and (G)-appeal B insofar as they relate to the capacity of the junction of old Newgate Lane/Newgate Lane East
- 24 Fareham Society-proof of evidence summary
- 25 Ms Hoskins-Linsig model results, junction layouts note and extract from the Highway Code
- 26 Highway Authority-Note dated 18 February 2021 regarding highway capacity point raised by Gosport Borough Council
- 27 Councillor Philpott-supplementary notes
- 28 Councillor Hayre-proof of evidence
- 29a Mrs White-proof of evidence summary
- 29b Mrs Roast-proof of evidence summary
- 30 Updated Report to inform HRA Stage 1 and Stage 2
- 31 Plan-Gosport Road Fareham Air Quality Management Area 2017 (A)
- 32 Gosport Borough Council Ward Maps-Peel Common and Bridgemary North

- 33 Pegasus-1) Traffic Flows at the old Newgate Lane and Newgate Lane East Junction and 2) 21 and 21A Bus Service
- 34 Birds Unilateral Undertaking-update
- 35 Appeal A-Main Unilateral Undertaking
- 36 Highway Authority-Note in response to new information provided by the appellants under cross examination of Ms Hoskins, Ms Parker-note on settlement terminology and Mr Gammer-updated proofs of evidence.
- 37 Councillor Philpott-email dated 19 February 2021, air quality clarification
- 38 Tetra Tech-Note on Winter Bird Mitigation Area Nitrogen Budget, 23 February 2021
- 39 Council-email dated 23 February 2021, consultation responses
- 40 Council/appellants-Consolidated Conditions Schedule
- 41 Council-Boundary plans related to Brookers Lane
- 42 Pegasus-Newgate Lane East Capacity note
- 43 Ms Parker-Status and weight of Local Plan Evidence Based Landscape Documents
- 44 Mr Sibbett-Note on qualifying features
- 45 Fareham Society-closing statement
- 46 Highway Authority-Note addressing queries relating to the southern site Unilateral Undertaking
- 47 Planning Inspectorate-contaminated land model conditions
- 48 Councillor Heneghan-consultation response, dated 29 October 2018
- 49 Lee Residents Association-Closing statement
- 50a Council/appellants-additional conditions
- 50b Pegasus-scale and density note
- 51 Councillor Heneghan-proof of evidence
- 52a The Civil Engineering Practice-Technical Note on Flood Risk and Discharge Restriction
- 52b Appeal A-Main Unilateral Undertaking-tracked changes
- 53 Pegasus note-Ownership and status of the Brookers Lane shared footway/cycleway between Newgate Lane East and Bridgemary
- 54 Ms Parker-Further advice on the consultation responses to the Fareham Landscape Assessment (FLA)(2017)(CDG15)
- 55 Tetra Tech-Report to inform Habitats Regulations Assessment Stage 1 and stage 2-updated
- 56 Acon Uk-Air Quality note
- 57 Birds Unilateral Undertaking-update (tracked changes)
- 58 Council-closing statement
- 59 Council-email confirmation, dated 25 February 2021, of the red line site boundary drawing numbers for the applications
- 60 Birds Unilateral Undertaking-update
- 61 Appellants-closing statement
- 62 Formally completed unilateral undertakings

**Land South of Romsey Avenue, Portchester**

**PINS Ref: APP/A1720/W/21/3271412 (LPA Ref: 18/1073/FP)**

**Statement of Common Ground: Five Year Housing Land Supply**

*8<sup>th</sup> July 2021*

---

**1. Introduction**

- 1.1. This Housing Land Supply (“HLS”) Statement of Common Ground (“SoCG”) has been prepared by Mr Steven Brown (of Wolf Bond Planning), on behalf of the Appellant, Foreman Homes Ltd and Richard Wright on behalf of Fareham Borough Council. It sets out both the agreed and disputed matters having regard to the five year housing land supply position.
- 1.2. This HLS SoCG identifies the requirement to be met during the five year period, the deliverability of the identified components of supply; and the subsequent five year housing land supply positions of the respective parties.

**2. The Agreed Position**

- 2.1. It is common ground that the Council is not able to demonstrate a five year supply of deliverable housing land against the minimum five year requirement for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 2.2. As such, it is common ground that the Council is not meeting paragraph 59 of the NPPF and, by virtue of footnote 7, paragraph 11(d) is engaged unless disapplied by virtue of paragraph 177.
- 2.3. The shortfall will only be rectified if planning approval is given for housing on sites not originally envisaged for housing in the adopted Local Plan Parts 1 and 2 or through plan-led development delivered through the emerging Local Plan.
- 2.4. In the circumstances, the most important, operative policy for determining the acceptability of residential development on the Site is Policy DSP40.

**3. The Housing Requirement and Five Year Period**

- 3.1. It is agreed between the parties that the five year period to be used for the purpose of calculating the five year housing land supply position for this appeal is 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 3.2. In so far as the strategic policies from the Core Strategy and Development Sites and Policies DPD are more than five years old, it is agreed, by operation of paragraph 73 and footnote 37 of the NPPF, that **the housing requirement falls to be measured against the local housing need figure calculated using the standard method.**

- 3.3. A such, the starting point to calculating the five year requirement is the minimum **539 dwelling annual requirement** derived from the application of the Standard Method. This equates to 2,695 dwellings requirement.
- 3.4. However, and as a result of the Housing Delivery Test (“HDT”) results published in February 2021, it is agreed that it is appropriate to apply a 20% buffer to the requirement.
- 3.5. This results in a minimum five year requirement of **3,234 dwellings for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.**

**4. Housing Supply**

- 4.1. The Council maintains it has a five year supply of 2,310 dwellings. This results in a shortfall of 924 dwellings and a supply of 3.57 years.
- 4.2. The Appellant identifies a supply of 600 dwellings. This results in a shortfall of 2,634 dwellings and a supply of only 0.93 years.
- 4.3. The respective positions are summarised in Table 1 below.

*Table 1: Respective Five Year Housing Supply Positions*

	<b>Fareham Borough Council</b>	<b>Appellant</b>
Minimum 5yr Req. 1 Jan 2021 to 31 Dec 2025	3,234	3,234
Deliverable Supply	2,310	600
Extent of Shortfall	-924	-2,634
No. Years Supply	3.57yrs	0.93yrs

- 4.4. The supply differences are set out in **Appendix 1** attached
- 4.5. As set out above, and on either approach, it is agreed that the Council is unable to demonstrate a five year supply of deliverable housing land.

**5. Implications of the Respective Five Year Positions**

- 5.1. The agreed position between the Council and Appellant is that the Council is not able currently to demonstrate a five year supply of deliverable housing land for the period 1st January 2021 to 31st December 2025.
- 5.2. As such, it is common ground between the Council and Appellant that the Council is not meeting paragraph 59 of the NPPF, thus engaging the presumption in favour of sustainable development at paragraph 11(d) of the NPPF unless disapplied by virtue of paragraph 177.
- 5.3. Whilst the Council and Appellant disagree as to the extent of the shortfall, it is nevertheless agreed, on either position, that the shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant. As such it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall.

- 5.4. In the light of the agreement reached between the parties in relation to the significance of the five year housing land supply shortfall, neither party will call their respective witnesses to deal with housing land supply matters unless such evidence is requested by the Inspector. This will save time and resources and will enable a more efficient inquiry process.
- 5.5. This HLS SoCG is signed and dated below.

### **Signatures**

On behalf of the Appellant:



MRTPI (Woolf Bond Planning obo Foreman

Name: Richard Wright MRTPI Fareham Borough Council

Date: 8<sup>th</sup> July 2021

\*\*\*\*\*

## Appendix 1: Site Delivery

The following table sets out the respective positions in relation to the deliverability of the components of supply.

Supply source	Revised Council <sup>1</sup>	WBP	Difference
Outstanding Planning Permissions – Small (104 dwellings) (10% discount)	69	69	0
Outstanding Full Planning Permissions – Large (5+ dwellings)	402	402	0
Outstanding Outline Planning Permissions – Large (5+ dwellings)	296	27 <sup>2</sup>	269
Resolution to Grant Planning Permission – Large (5+ dwellings) (exc Welborne)	742 <sup>3</sup>	0	742
Resolution to Grant Planning Permission – Large (5+ dwellings) (Welborne)	390	0	390
Brownfield Register Sites	276	0	276
Local Plan Adopted Housing Allocations	33	0	33
Windfall	102	102	0
<b>Total</b>	<b>2,310</b>	<b>600</b>	<b>1,710</b>

<sup>1</sup> Supplementary Statement to Newgate Lane East Appeal (3269030)

<sup>2</sup> Sites included in this category by WBP are: Egmont Nurseries, Brook Avenue (8 dwellings); 18 Titchfield Park Road, Titchfield (6 dwellings); east & west of 79 Greenaway Lane (6 Dwellings) and Burridge Lodge (7 dwellings)

<sup>3</sup> Paragraph 5.8 of the Council's Supplementary Statement for Newgate Lane East Appeal indicates that this figure should be 663.

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:	Mr
First Name:	Steve
Last Name:	Carrington
Job Title: (where relevant)	
Organisation: (where relevant)	Foreman Homes Ltd
	c/o Agent
Address:	
Postcode:	
Telephone Number:	
Email Address:	

A3 Please provide the Agent's details:

Title:	Mr
First Name:	Steven
Last Name:	Brown
Job Title: (where relevant)	
Organisation: (where relevant)	Woolf Bond Planning
Address:	
Postcode:	
Telephone Number:	
Email Address:	

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1, HA1 and HP4**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
8. Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015)
9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in a parcel of the Strategic Allocation known as land North and South of Greenaway Lane, Warsash. Foreman Homes have specific interest in Land north of Greenaway Lane (SHELAA ref 1263). The site has been assessed in the SHELAA as having a yield of 28 dwellings based on a site area of approximately 1.30ha. There is a live application on part of the site
- 1.2. As such, the Site has been promoted through earlier stages of the Local Plan process as sustainable urban extension to Fareham, an acknowledged suitable location for growth within the Borough as indicated in the SHELAA.
- 1.3. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore advocate changes to the Local Plan to address this, whilst supporting the allocation for the land North and South of Greenaway Lane.
- 1.4. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
- 1.5. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## **2. REPRESENTATIONS AND SUPPORTING INFORMATION**

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)

2.2. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection
Policy HA1 – North and South of Greenaway Lane	Support

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
  
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
  
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
  
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
  
- 3.4. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities. It is imperative that the allocation of land north and south of Greenaway Lane is promoted to ensure there is a large contribution towards housing supply thus helping to resolving this issue.

- 3.5. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
- 3.6. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, FBC has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement asset out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.

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<sup>7</sup> (541 x 18) + 1,000

5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

- 5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.
- 5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

## **Conclusions**

- 5.33. The housing requirement and delivery as set out in Policy H1 cannot be said to be sound as it fails to provide for at least 15 years post adoption together with a failure to plan for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### **Changes sought to the Development Requirements in Policy H1.**

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and like Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;

- c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
  
- d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.

5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.

- 1. That policy H1 is amended to:
  - A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
  
- 2. That consequential amendments are made to the document to reflect these revisions.

## **6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY**

### **General**

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

- 6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.
- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Portchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.

- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
  - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
  - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
  - d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
  - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
  - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

- 6.10. The Inspector’s conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.
- 6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client’s omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 10**):
- 6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.
- 6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 10** is that the shortfall is much greater than purported to be the case by the Council.
- 6.14. The below Table provides a comparison between the housing land supply position set out in the Council’s Published Report to Committee in February 2021, the Council’s updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 10**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

- 6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.
- 6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

## **Suggested Changes to Policy HP4**

- 6.17. Policy HP4 cannot be said to be sound in respect of the following:
- a) Not positively prepared as the policy (alongside others in the document) will fail to provide an effective solution towards maintaining a five year supply of housing,
  - b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.
- 6.18. To address these matters of soundness, the following amendments are proposed:
- 1. That clause c is omitted from policy HP4.

## **7. POLICY HA1: LAND NORTH AND SOUTH OF GREENAWAY LANE**

### **General**

- 7.1. Foreman Homes have an interested in a parcel of land, Land north of Greenaway Lane, which is part of the larger allocation known as land North and South of Greenaway Lane which has a yield of 824 dwellings. The parcel of land, known hence forth as ‘the site’ has a live outline planning application for 6 self build dwellings.
- 7.2. The Site is well related to the urban area. It is not in a strategic gap and nor is it identified as a valued landscape. Moreover, the Site affords a sustainable location in helping to meet identified housing needs.
- 7.3. The Site has a live outline planning permission with all matters reserved (except for access) for residential development of up to 6 self build dwellings, associated landscaping and access from Greenaway Lane (LPA Ref: P/20/0730/OA).
- 7.4. Comments raised during the consultation have been addressed with the only outstanding matter relating to nitrate mitigation.
- 7.5. Foreman Homes are entering into an agreement to buy credits from Heaton Farms Ltd at Land at Coleman’s Lane, IOW to offset the nitrate load from the proposed development therefore overcoming the issue.
- 7.6. The development has numerous benefits including the provision of much needed housing in a sustainable location
- 7.7. The lack of objection from consultees on the planning application demonstrates that the development of this site is acceptable and therefore the continued promotion of the site as part of the larger Warsash allocation is welcome.

## **Change sought to the Local Plan**

- 7.8. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **land north and south of Greenaway Lane should continue to be promoted for residential development.**

## **8. OVERALL CONCLUSIONS**

- 8.1. Our representations have identified a number of concerns with the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
- 8.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.
- 8.3. These matters can be addressed through Main Modifications.

## **9. FINAL REMARKS**

- 9.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 9.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations.
- 9.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.



The Planning Inspectorate

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# **Report to Tonbridge and Malling Borough Council**

**by Louise Crosby and Luke Fleming**

**Inspectors appointed by the Secretary of State**

**Date: 07 June 2021**

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Planning and Compulsory Purchase Act 2004  
(as amended)  
Section 20

## **Report on the Examination of the Tonbridge and Malling Borough Council Local Plan**

The Plan was submitted for examination on 23rd January 2019

The examination hearings were held between 6th and 8th October 2020

File Ref: PINS/H2265/429/8

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## **Abbreviations used in this report**

DtC	Duty to Co-operate
HMA	Housing Market Area
LPA	Local Planning Authority
MoUs	Memorandums of Understanding
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
SDC	Sevenoaks District Council
the Act	Planning and Compulsory Purchase Act 2004 (as amended)
the Plan	Tonbridge and Malling Borough Local Plan

## **Non-Technical Summary**

This report concludes that the Tonbridge and Malling Borough Local Plan (the Plan) is not legally compliant in respect of the Duty to Cooperate (DtC) and, as such, we recommend that the Plan is not adopted.

## Introduction

1. This report contains our assessment of the Tonbridge and Malling Borough Local Plan in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended) (the Act). It considers whether the Plan's preparation has complied with the duty to co-operate (DtC).
2. The revised National Planning Policy Framework (NPPF) was published in July 2018 and further revised in February 2019. It includes a transitional arrangement in paragraph 214 which indicates that, for the purpose of examining this Plan, the policies in the 2012 NPPF will apply. Similarly, where the Planning Practice Guidance (PPG) has been updated to reflect the revised NPPF, the previous versions of the PPG apply for the purposes of this examination under the transitional arrangement. Therefore, unless stated otherwise, references in this report are to the 2012 NPPF and the versions of the PPG which were extant prior to the publication of the 2018 NPPF.
3. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound Plan. The Tonbridge and Malling Borough Local Plan, submitted on 23 January 2019, is the basis for our examination. It is the same document as was published for consultation between 1 October 2018 and 19 November 2018.
4. This report considers whether the Plan's preparation has complied with the DtC. Given our conclusion in relation to the DtC, we do not go on to consider whether the Plan is sound and whether it is compliant with other legal requirements. If a local planning authority cannot demonstrate that it has complied with the DtC at the independent examination of their local plan, then Section 20(7A) of the Act requires that the examiner must recommend non-adoption of the Plan. This is the situation in this case, and it is not, therefore, relevant for us to consider the other matters in this Report. Accordingly, we have not recommended any main modifications.
5. Hearing sessions were held between 6 and 8 October 2020 and they focussed on legal compliance matters including the DtC and Sustainability Appraisal.
6. Further hearing sessions were planned as part of the examination from 3-5 November and on 10 November 2020 to consider other soundness issues. However, following our consideration of the evidence presented by Tonbridge and Malling Borough Council (the Council) and other participants in response to our Matters, Issues and Questions<sup>1</sup> at the hearing session in relation to DtC, and taking into account written representations and discussion at that hearing session we notified the Council in a letter<sup>2</sup> dated 22 October 2020, that we had

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<sup>1</sup> ED56

<sup>2</sup> ED67

significant concerns in respect of legal compliance. The letter also explained that we had asked the Programme Officer to cancel the hearings planned for November 2020 and that we would be writing to the Council as soon as possible setting out our specific thoughts in more detail. The letter also advised that we would not reach a final conclusion on the way forward for the examination until we had had a chance to consider the Council's response to that letter.

7. Our letter<sup>3</sup> to the Council, dated 15 December 2020, set out our concerns with regards to the DtC in some detail. The Council submitted a response dated 29 January 2021<sup>4</sup>, along with a number of appendices. Having fully considered the Council's response and appendices, our final letter<sup>5</sup>, to the Council, dated 2 March 2021, set out our conclusions on this matter and stated that, there were two options before the Council; either to withdraw the Plan from examination or we would write a final report recommending its non-adoption because of a failure to meet the DtC. We gave the Council 21 days to consider which option they wished to pursue. On 11 March 2021 the Council confirmed that it would not be withdrawing the Plan and invited us to prepare a final report at our earliest convenience<sup>6</sup>.

## **Assessment of Duty to Co-operate**

### **Background**

8. Section 20(5)(c) of the Act requires that we determine whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
9. Section 33A of the Act imposes a duty on a local planning authority to co-operate with other local planning authorities, the County Council and prescribed bodies or other persons by engaging constructively, actively and on an ongoing basis in relation to the preparation of a development plan document so far as relating to a strategic matter to maximise the effectiveness of the activity of plan preparation. It makes clear that sustainable development or use of land that would have a significant impact on at least two planning areas is such a strategic matter. Account can only be taken of the engagement undertaken by authorities up to the point of submission of the Plan, as the assessment of compliance with the DtC only relates to the preparation of the Plan.
10. Government policy in the 2012 NPPF paragraphs 178 to 181 sets out the importance placed on planning strategically across boundaries. Paragraph 181

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<sup>3</sup> ED68

<sup>4</sup> ED69

<sup>5</sup> ED81

<sup>6</sup> ED82

states that "local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination" and that "cooperation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development".

11. It is not disputed by the Council that housing is a strategic matter for the purposes of S33A of the Act, which required cooperation as set out above. Whether the DtC has been complied with is a matter of judgement for the examining Inspectors following consideration of the evidence presented by the Council and other participants, both in writing and at the hearing sessions.
12. Sevenoaks District Council (SDC) considers that it is unable to meet all of its own housing needs. It is a neighbouring local authority and forms a large part of the West Kent Housing Market Area (HMA) which also includes a significant part of Tonbridge and Malling Borough, as well as parts of Tunbridge Wells Borough. Our report will focus on the engagement of the Council with SDC, in relation to housing across the HMA. The NPPF (para 47) states that local planning authorities (LPAs) should use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for housing in the HMA, as far as is consistent with the policies set out in this Framework.

**Did the Council know that Sevenoaks District Council considered that it would be unable to meet its own housing needs in full, prior to the submission of their plan for examination in January 2019?**

13. The Council explained at the hearings that it was not clear until SDC's Regulation 19 (of the Town and Country Planning (Local Plan) (England) Regulations 2012 (the Regulations)) Plan was published in December 2018 what the scale of unmet need was and even then it was not certain as the Plan had not been examined by an Inspector and the housing need and requirement found sound. As set out above, the Tonbridge and Malling Regulation 19 Plan was submitted for examination on 23 January 2019 which was before the transitional deadline of 24 January 2019, set out in paragraph 214 of Annex 1 to the July 2018 and February 2019 versions of the NPPF.
14. At the hearings the Council's view was that until SDC's Plan had been consulted on there was uncertainty about whether there was any unmet need and the basis for that. Furthermore, there had not been a process of examination to demonstrate that there were unmet needs and even if there were unmet needs there was a chance that they could be quite small. However, SDC's Regulation 18 Plan which it consulted on, between July and September 2018, identified a need for 13,960 dwellings and identified sites to

meet between 6,582 and 13,382 dwellings<sup>7</sup>. So, at this stage it was clear there was a likely shortfall of at least around 600 dwellings, and this was the best case scenario. At worst it was closer to approximately 7000. While the level of unmet need and the justification for it could be a matter for debate, there is enough here to demonstrate that this was a strategic matter on which cooperation was required. In the submitted SDC Regulation 19 Plan the unmet need was in the order of 3,392 dwellings<sup>8</sup>. The calculation of housing need is not an academic exercise, it is a question of identifying an actual local need.

15. However, much earlier than this, in October 2017 when SDC were at their 'issues and options' stage of plan preparation, the Council wrote to SDC (ED78B), saying, "At this stage and based on the evidence available it is highly unlikely that there would be supportable reasons or indeed the capacity for meeting any unmet need from Sevenoaks in Tonbridge and Malling".
16. This was at a stage in the process when officers in a report to Tonbridge and Malling Council's Planning and Transportation Advisory Board (ED78A), in December 2017, advised that SDC, unlike Tonbridge and Malling Council, was not planning to release Green Belt land to meet its housing need. It also says that, even with some Green Belt releases, "the conclusion is that Sevenoaks will be a significant way adrift from meeting its identified housing needs". So, in our view, it is clear that the Council knew in 2017 that SDC would be likely to reach the judgement that it would be unable to meet its own housing needs in full, even with Green Belt release.
17. The Council's views on market capacity are informed by a Housing Delivery Study (CD HO3) which was published in September 2017. The purpose of the Study was to consider the market capacity and potential pace of housing delivery within the Borough to inform the development of the emerging Local Plan. However, paragraph 1.7 says that "emerging evidence suggests that a number of neighbouring authorities may not be able to meet in full their objectively assessed housing need. Some authorities may therefore ask TMBC whether it is able to help to address an unmet housing need arising". Paragraph 4.8 advises that "...in addition to Tonbridge and Malling's own housing needs, the Council has a Duty to Cooperate with neighbouring authorities and is likely to need through the plan-making process to consider the potential to contributing to meeting unmet housing needs from beyond the borough boundary. A core role of this study is to consider what additional housing delivery the market could potentially accommodate".

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<sup>7</sup> Page 2 of letter dated 28 October 2019, from the Inspector examining the SDC Plan

<sup>8</sup> Paragraph 14 of the Report on the Examination of SDC Plan, dated 2 March 2020

18. It is clear then that one of the motivations for the September 2017 Study was to consider the issue of unmet needs arising in a number of neighbouring authorities. Irrespective of a number of technical concerns raised by representors with regard to whether this evidence demonstrates market capacity issues or not, in our view the Housing Delivery Study is further evidence that shows that the Council knew in 2017 that SDC had or was likely to have unmet need and that they may be asked for help with meeting the need.
19. Also, it is well documented that the Council, along with SDC and Tunbridge Wells were involved in a pilot scheme (West Kent Statement of Common Ground Pilot Project), which appears to have started in 2017. This pilot scheme with the Planning Advisory Service (PAS) was set up to look at the use of Statements of Common Ground in plan making. Paragraph 6.6 of the PAS facilitator's notes, dated April 2018, says "Each of the Council's has a clear figure for its housing need, but whilst Tonbridge and Malling BC is confident that it can meet its need, Sevenoaks DC and Tunbridge Wells BC have not yet completed the work needed to determine whether or not they can meet their housing need. Thus the Councils are not yet in a position to reach agreement on the matter of housing supply". However, paragraph 6.3 of the same notes says, "This may increase the housing land supply but it remains unlikely that Sevenoaks DC will be able to meet its housing need in full". This shows that it was known then that there was likely to be some unmet need in SDC, albeit there was no firm figure.
20. In summary, it appears from the evidence before us that the Council knew for a number of years, prior to the submission of their Plan for examination, that it was highly likely that SDC would reach the judgement that it would be unable to meet its housing need in full. While the scale of the unmet need was uncertain, the overall position was clear well in advance of the submission of the Plan for examination in January 2019. It should, therefore, have been obvious to the Council that this was a strategic matter to which the DtC applied.
21. This should have led to the Council engaging constructively, actively and on an ongoing basis with SDC on unmet housing needs, regardless of whether this was a precise figure or a range, or indeed whether the Council felt it may not be able to accommodate the unmet need in full or in part. The requirement of the Act is for authorities to actively engage to maximise the effectiveness of plan preparation.

**Did the Council engage constructively, actively and on an ongoing basis with SDC on unmet housing needs?**

22. In the Council's Duty to Cooperate Statement (CD SC1), section 8 deals with Cross-Boundary Issues. The table in paragraph 8.1 of this document sets out the strategic cross boundary issues, the key neighbouring authorities/organisations in relation to each issue and the summary of cooperation. Under the housing section of this table the key neighbouring authorities/organisations are listed as Maidstone Borough Council, Ashford Borough Council, Kent County Council and Highways England. It seems that the limited extent of this table is because it only covers authorities where cross boundary issues are specifically covered in the Plan. Nowhere in this document, which is dated January 2019, and therefore postdates the publication of the SDC Regulation 19 Plan on 18 December 2018, is there any mention of unmet housing need in SDC. If there had been any constructive, active and ongoing engagement with SDC ahead of submission on what was clearly a strategic matter, it would be reasonable to expect that this would at least be mentioned in the Council's DtC statement.
23. As set out above, it was apparent from as early as October 2017 there were clear signs that SDC was likely to conclude that it would not be able to meet its housing needs in full. It seems that regular meetings were held between the Council and SDC during the preparation of the Council's Plan, but there is no evidence that unmet housing need in SDC was discussed at these meetings and no meeting minutes have been provided to evidence that housing needs were discussed. The Council say that the discussion was predominantly about 'constraints' to meeting housing needs but no minutes of any of these meetings have been produced as evidence of what was actually discussed. Consequently, there is no evidence before us, that these meetings were used for constructive and active engagement in an attempt to resolve the strategic matter of unmet housing need and maximise the effectiveness of plan preparation.
24. The Council argue that SDC did not formally ask them for help and it was not up to the Council to "make the running", but this is a circular argument with a risk that both parties defer the issue to the other without any meaningful attempt to resolve it. We are obliged to consider whether the Council cooperated and the question of whether or not SDC made any running does not remove the obligation on the Council, particularly as the issue of unmet housing need in Sevenoaks appeared to be well known to both. Moreover, it is clear from the Council's letter sent to SDC in October 2017, where they say "At this stage and based on the evidence available it is highly unlikely that there would be supportable reasons or indeed the capacity for meeting any unmet need from Sevenoaks in Tonbridge and Malling", that such a request would have been likely to be pointless. The letter was therefore a

discouragement to constructive, active and ongoing engagement, because it can reasonably be read as closing the door to cooperation. Indeed, there does not appear to have been much engagement for the next 15 months or so, up to the submission of the Plan for examination. In fact, very little evidence of any meaningful engagement in relation to this particular strategic matter has been submitted for us to take into account.

25. The Council explained at the hearings that, if they had delayed the submission of the Plan to try to accommodate some of the unmet need from SDC, once the SDC Regulation 19 Plan was published in December 2018, they would have had to effectively start plan preparation again. This is because they would have missed the transitional deadline in NPPF paragraph 214 and their housing need would have increased by around 3000 dwellings, due to the introduction of the standard method in the 2018 and 2019 versions of the NPPF<sup>9</sup> and related PPG. Whilst this may have been so, it is not an adequate or legally compliant reason to not engage. Early engagement in 2017, when there was first evidence that SDC were unlikely to be able to meet their housing need, would not necessarily have caused delays to the overall process and to the Council meeting the transitional deadline<sup>10</sup>. Furthermore, the decision to push ahead to submit on or before the 24 January 2019 was entirely a choice made by the Council. Importantly, even if no agreement had been reached on the matter, if constructive, active and ongoing engagement had taken place from the earliest stages of preparation of the Plan, the Plan would have been found legally compliant in relation to the DtC.
26. The conclusion of the SDC Regulation 18 consultation, in September 2018, was some four months prior to the submission of the Plan for examination. At this point the unmet need was still a range and would only be confirmed on conclusion of the Sevenoaks examination. This is something the Council argue is necessary before active and constructive engagement can commence, but we strongly disagree. It should have been clear at this time (i.e. four months prior to submission of the Plan), if not earlier, that there was a strategic matter relating to unmet housing need which required addressing through constructive engagement, regardless of the lack of clarity at the time over the precise volume of unmet need.
27. Whilst it was not clear in 2017, or even later in the process, at the Regulation 18 consultation stage, what the exact level of unmet need was or would be, the fact that SDC considered there was likely to be some unmet need should have led to constructive, active and ongoing engagement between the Council and SDC at that point and subsequently.

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<sup>9</sup> NPPF 2019 Paragraph 60

<sup>10</sup> NPPF 2019 Annex 1, paragraph 214

28. The Council advise that, like SDC, they have large amounts of Green Belt land, which is a constraint to meeting housing needs other than their own. Both authorities have significant areas of Green Belt as well as land in Areas of Outstanding Natural Beauty (AONB). The Council carried out a Green Belt review of land in their own administrative boundary, leading to the release of some Green Belt land in the Plan as well as a proposal to put some land into the Green Belt.
29. However, there is no evidence that at any time the Council cooperated or even considered cooperating with SDC on a joint review of the Green Belt across both of their boundaries to understand the comparative quality across the two authority areas and any potential to amend Green Belt boundaries to fully or more fully meet needs. Nor was there any joint work to assess and reach an agreement on the housing capacity on non Green Belt areas across both authorities or on how that capacity might reasonably be maximised. The Council say the reason for this is that the two LPAs were at different stages of plan making, however the plans were submitted for examination within months of each other. In addition, the fact that the Council disagreed with SDC on the approach they were taking to Green Belt release did not mean the DtC did not apply and could be ignored.
30. In terms of the Council's position about relative timescales, the Council's Regulation 19 Plan was published for consultation on 1 October 2018, around 3 weeks after the conclusion of the SDC Regulation 18 consultation. SDC published their Regulation 19 Plan for consultation on 18 December 2018 and so the fact is the plan-making timescales and processes in Tonbridge and Malling and SDC were actually closely aligned. We can find no credible reason why the Councils could not have engaged constructively and actively during the plan making process in accordance with the duty on them to engage constructively with each other in a meaningful attempt to resolve issues relating to unmet needs.
31. Whilst resolution to the problem of unmet housing needs is not a prerequisite to the Council being able to demonstrate compliance with the DtC, earlier, constructive, active and ongoing engagement, in line with the Act and national policy as articulated in the Framework and PPG, would have been much more likely to result in an effective strategy for meeting SDC's need, whether within the SDC area or elsewhere. Even if in this case the Council considered it unrealistic to contemplate a joint local plan at this point, it might have considered other less formal mechanisms of compliance with the duty, such as aligning plan time-tables and policies and/or joint approaches to plan-making. Any steps of that kind would have demonstrated positive proactive attempts at cooperation.

32. The Council's hearing statement<sup>11</sup>, submitted to SDC's examination, explains the Council's view that it would be unreasonable to expect it to accommodate any unmet housing need for SDC because it faces similar constraints and challenges, is planning to meet its own need in full, and market and infrastructure capacity mean any such external need could not be accommodated. In the circumstances, these could have all been valid issues for discussion and engagement between both authorities, but there is no evidence to indicate that they were actually the subject of any constructive engagement between the authorities.
33. The Council advise that once the actual SDC unmet need is examined and established, they would potentially seek to deal with it through a future review of the Plan. However, such an approach is not in the spirit of the Act or of national policy. The identified need for housing exists now, and the likely existence of unmet need has been known about for some time and is therefore a strategic matter that should have been considered through the DtC in the current round of local plans, not delayed to some future date. Deferring the issue to subsequent plans does not amount to constructive, active engagement, especially when the plan making processes were, in reality, closely aligned.
34. Memorandums of Understanding (MoU) were signed after the submission of both plans and provide no evidence of constructive and active engagement prior to the submission of the Plan and are therefore of no help in demonstrating the DtC has been met. Indeed, the short final MoU simply states, *'TMBC's evidence of meeting the Duty is set out in the Duty to Cooperate Statement (January 2019). The strategic cross-boundary matters and how the Duty was addressed are summarised in section 8 of the DtC Statement. The details are set out in sections 9 to 16. The record of engagement is documented in Appendix A'*. As set out above, the Statement provides no reference to the unmet housing need in SDC. Appendix A is a list of meetings that took place between April 2012 and January 2019 with various organisations, but no minutes have been provided from any of these meetings to show that unmet housing need in SDC was discussed, and moreover from careful consideration of the verbal evidence given by the Council at the hearing sessions, it would seem that it was not discussed at any of the meetings. The only discussion was about the constraints all of the Council's in the HMA were facing in meeting their housing need. Simply discussing constraints does not in itself amount to cooperation.
35. This shortcoming is surprising given that the Council were involved in the pilot scheme (West Kent Statement of Common Ground Pilot Project) with PAS looking at the use of Statements of Common Ground in plan making. Indeed,

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<sup>11</sup> Paragraph 13.19 of Tonbridge & Malling Borough Council Position Statement (ED58)

as part of this project, the Council, SDC, and Tunbridge Wells Borough Council all agreed in April 2018 that the need to address the matter of unmet housing need was the most significant issue to be addressed in any Statement of Common Ground<sup>12</sup>. This also shows that by April 2018 the Council and SDC had acknowledged that it remained unlikely SDC would be able to meet its housing need in full<sup>13</sup> and despite this, there is no evidence of cross boundary working with SDC and others as a way of seeking to ensure that housing needs were met in full across the HMA. Moreover, the NPPF at paragraph 181 provides advice to LPAs on how to demonstrate evidence of effective cooperation in relation to cross-boundary impacts. This suggests the use of, among other things, memorandums of understanding. It adds that 'cooperation should be a continuous process of engagement from initial thinking through to implementation...'. There is no evidence that this approach was followed.

36. Despite knowing that, as early as 2017, SDC was indicating it would be likely to have unmet housing need, it is reasonable for us to conclude on the basis of everything that we have considered that the Council failed to engage constructively, actively and on an ongoing basis with SDC on that strategic matter. An active process of ongoing, active and constructive engagement might or might not have led to a more positive outcome despite the constraints of market capacity, infrastructure capacity, Green Belt and AONB designations. However, what is certain is that, if parties choose not to engage with each other, there will be little prospect of difficult but important cross-border issues being resolved in relevant strategic matters. If there is no cooperation on such matters, then the effectiveness of plan preparation is unlikely to be maximised.

**If a plan is found to have failed the DtC, is it possible to proceed with the Examination?**

37. In a letter to the Planning Inspectorate, dated 18 June 2019, the Secretary of State stressed to Inspectors the importance of being pragmatic in getting a plan in place that, in line with paragraph 35 of the 2019 NPPF, represents a sound plan for the authority.
38. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This 2015 letter also stresses the importance of Inspectors working in a pragmatic way with councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within 5 years of adoption, giving councils the option to undertake

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<sup>12</sup> Sevenoaks District Council v Secretary of State for Housing Communities and Local Government [2020] EWHC 3054 (Admin)

<sup>13</sup> ED69A, Appendix D, paragraph 6.3

further work to address shortcomings identified at examination and highlighting significant issues to councils very early on and giving councils the full opportunity to address issues. However, the failure we have identified cannot be remedied during the examination since any failure in DtC cannot be resolved after submission of the Plan because the duty relates to the period of plan preparation which has ended. Once we had considered all of the evidence pertaining to DtC presented in writing and orally at the hearing sessions we immediately notified the Council of our concerns and cancelled the future hearings. We gave the Council opportunities, prior to the hearing sessions, during the hearing sessions and afterwards, to provide additional evidence confirming its approach to complying with the DtC undertaken prior to the submission of the Plan for examination.

39. In examining the Plan we have had this advice in the forefront of our minds and we have worked in a pragmatic way with the Council towards achieving a sound plan as far as practicable. However, we have identified a failure of legal compliance in relation to the DtC.
40. It is reasonable for us to conclude that the DtC, as set out in section 33A of the Act, has not been met.

## **Overall Conclusion and Recommendation**

41. The DtC in Section 33A of the 2004 Act has not been met for the reasons set out above and we, therefore, recommend that the Plan is not adopted.

*Louise Crosby and Luke Fleming*

Inspectors



The Planning Inspectorate

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# **Report to Sevenoaks District Council**

**by Karen L Baker DipTP MA DipMP MRTPI**

**an Inspector appointed by the Secretary of State**

**Date 2 March 2020**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Sevenoaks District Local Plan**

The Plan was submitted for Examination on 30 April 2019.

The Examination Hearings were held between 24 and 26 September 2019 and between 1 and 3 October 2019.

File Ref: PINS/G2245/429/7

## **Abbreviations used in this Report**

DtC	Duty to Co-operate
HMA	Housing Market Area
HPS	Hearing Position Statement
IPe	Intelligent Plans and Examinations
the Plan	Sevenoaks District Local Plan
MHCLG	Ministry of Housing, Communities and Local Government
MM	Main Modification
NPPF	National Planning Policy Framework
OAN	Objectively Assessed Need
PAS	Planning Advisory Service
PPG	Planning Practice Guidance
SoCG	Statement of Common Ground
SHMA	Strategic Housing Market Assessment

## **Non-Technical Summary**

This Report concludes that the Sevenoaks District Local Plan (the Plan) is not legally compliant in respect of the Duty to Co-operate (DtC) and, as such, I recommend that the Plan is not adopted.

## Introduction

1. This Report contains my assessment of the Sevenoaks District Local Plan (the Plan) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). The National Planning Policy Framework (NPPF) 2019 makes it clear in paragraph 35 that local plans are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. It goes on to say that in order to be sound, a local plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the Examination is the assumption that the local planning authority has submitted what it considers to be a legally compliant and sound plan. The Sevenoaks District Local Plan Proposed Submission Version<sup>1</sup>, dated December 2018 and submitted on 30 April 2019, is the basis for my Examination. It is the same document as was published for consultation between 18 December 2018 and 3 February 2019.
3. This Report considers whether the Local Plan's preparation has complied with the Duty to Co-operate (DtC). Given my conclusions in respect of the DtC, I do not go on to consider whether the Plan is sound and whether it is compliant with the other legal requirements. If a local planning authority cannot demonstrate that it has complied with the Duty at the independent Examination of their Local Plan, then Section 20(7A) of the Act requires that the Examiner must recommend non-adoption of the local plan. This is the situation in this case, and it is not, therefore, necessary for me to consider the other matters further in this Report.
4. Hearing sessions were held between 24 and 26 September 2019 and between 1 and 3 October 2019. These focussed on legal compliance matters, including the DtC, and matters of soundness in relation to the Local Plan Strategy, Green Belt, Housing Need, Housing Requirement, Housing Distribution and Housing Supply, along with the Sustainability Appraisal.
5. Further Hearing sessions were planned as part of this Examination between 5 and 7 November 2019 and between 12 and 14 November 2019 to consider other soundness matters including: individual housing allocations; Gypsy and Traveller provision and allocations; employment need, requirement, distribution and supply; individual employment allocations; transport and infrastructure; the historic environment; open space, recreation and community facilities; the natural environment and biodiversity; climate change, flooding and water management; and, health, well-being and air quality. However, following my consideration of the evidence presented by the Council and other participants in response to my Matters, Issues and Questions<sup>2</sup> at the Hearing sessions during the first two weeks, and taking into account the written representations and discussion at those Hearing sessions, I had significant concerns in respect of legal compliance, namely the DtC, and soundness.

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<sup>1</sup> SDC001

<sup>2</sup> ED8

6. Following the first two weeks of Hearing sessions, I notified the Council in my letter<sup>3</sup>, dated 14 October 2019, that I had significant concerns about a number of aspects of the Plan, both in terms of legal compliance and soundness. This letter also stated that, given these concerns, I had asked the Programme Officer to cancel the further Hearing sessions planned for November and that I was preparing a letter setting out my thoughts in more detail which would be with the Council shortly afterwards. It also confirmed that I would not reach any final conclusions on the way forward for the Examination until I had had the opportunity to consider the Council's response to that letter.
7. Although I had concerns regarding soundness, these were issues which I would have needed to explore further, it is the failure to comply with the legal DtC which necessitated a halt to the Examination proceedings. Any failure in the DtC cannot be rectified once the Plan has been submitted for Examination because the DtC applies specifically to Plan preparation, and Plan preparation ends when the Plan is submitted for Examination.
8. My letter<sup>4</sup> to the Council, dated 28 October 2019, set out my concerns with regards to the DtC in some detail. The Council submitted responses<sup>5</sup> to this and to my earlier letter, along with a number of appendices. I replied<sup>6</sup> on 19 November 2019 to say that I would be responding after the pre-Election period, in line with the Planning Inspectorate's published position in this regard.
9. Having fully considered the Council's responses and appendices, my final letter<sup>7</sup> to the Council, dated 13 December 2019, set out my conclusions on this matter and stated that, unless the Council confirmed that it intended to withdraw the Plan from Examination, the only course of action open to me would be to prepare a Report concluding that the Plan is not legally compliant in respect of the DtC and recommending that it should not be adopted. In its letter<sup>8</sup>, dated 3 January 2020, the Council confirmed that it would not be withdrawing the Plan from Examination and asked that I issue my Report as soon as possible.

### **Main Modifications**

10. I have found a failure in respect of the DtC and, as such, I have no option but to recommend that the Plan should not be adopted. Accordingly, I have not concluded on any other matters in connection with the Plan and, as a result, I would not be able to recommend any Main Modifications [MMs].

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<sup>3</sup> ED37

<sup>4</sup> ED40

<sup>5</sup> ED38, ED38A, ED41, ED42, ED42A, ED42B and ED42C

<sup>6</sup> ED43

<sup>7</sup> ED44

<sup>8</sup> ED45

## Assessment of Duty to Co-operate

### ***Has the Council demonstrated that it has engaged constructively, actively and on an on-going basis in the preparation of the Local Plan?***

11. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by Section 33A in respect of the Plan's preparation.
12. Section 33A requires that a local planning authority co-operates with other local planning authorities, the County Council and prescribed bodies or other persons in relation to the preparation of the Plan. This duty requires the Council to engage constructively, actively and on an on-going basis in the preparation of the Plan, so far as it relates to a strategic matter. A strategic matter includes the sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas.
13. Government policy, set out in paragraph 26 of the NPPF, says that effective and ongoing joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. It goes on to say that, in particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere. Co-operation is, therefore, about maximising the effectiveness of plan preparation.
14. The Plan, as submitted, identifies a need for 13,960 dwellings between 2015 and 2035, but sets out a requirement for 10,568 dwellings, which would amount to an unmet need of 3,392 dwellings. The Council advanced a position<sup>9</sup> during the Examination which sought to reduce the unmet need. However, it would still have left an unmet need of 1,316 dwellings, even if I had agreed with the Council's position.
15. It is common ground between the Council and most parties to the Examination that housing is a strategic matter upon which the Council should engage constructively, actively and on an on-going basis with its neighbours. I concur with this view. The Council published a DtC Statement<sup>10</sup> in May 2019, following the submission of the Plan for Examination, which sets out the activities undertaken by the Council, including meetings with neighbouring authorities, at both Officer and Member level, and the production of a joint evidence base with neighbouring authorities in the West Kent Housing Market Area<sup>11</sup> [HMA].

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<sup>9</sup> Housing Supply Update Paper – C2 Update [ED23]

<sup>10</sup> SUP006 and SUP006a-d

<sup>11</sup> The West Kent Housing Market Area includes Sevenoaks District Council, Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council.

16. Whether the DtC has been complied with is a matter of judgement for the examining Inspector following consideration of the evidence presented by the Council and other participants, both in writing and at the Hearing sessions.
17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment<sup>12</sup> (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area<sup>13</sup> (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.
18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement<sup>14</sup> and Appendices<sup>15</sup> and in Appendix 1: Schedule A<sup>16</sup> attached to its letter<sup>17</sup>, dated 18 November 2019, with the minutes of most of these meetings<sup>18</sup> provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group<sup>19</sup> and the West Kent Statement of Common Ground (SoCG) Pilot Programme group<sup>20</sup>.
19. The minutes<sup>21</sup> of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues

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<sup>12</sup> Sevenoaks and Tunbridge Wells Strategic Housing Market Assessment, prepared by GL Hearn Limited, September 2015 [HOU001]

<sup>13</sup> The West Kent HMA includes Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council

<sup>14</sup> SUP006

<sup>15</sup> SUP006a, SUP006b, SUP006c and SUP006d

<sup>16</sup> ED42A

<sup>17</sup> ED42

<sup>18</sup> No minutes have been provided of the meetings held on 6 December 2017, 22 January 2018 and 14 March 2018, although summaries of the meetings on 22 January 2018 and 14 March 2018 are provided in the West Kent Statement of Common Ground (SoCG) Pilot Project Facilitator's Note, dated 3 April 2018 (updated by the amended version of this note dated 10 April 2018 and submitted by the Council as part of its Appendix 3: Duty to Co-operate Appendices [ED42C]).

<sup>19</sup> This group is made up of the three West Kent Housing Market Area (HMA) authorities, namely Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council.

<sup>20</sup> This group, facilitated by the Planning Advisory Service (PAS), also included the West Kent HMA authorities.

<sup>21</sup> Pages 172-174 of SUP006a

and Options (Regulation 18), do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary<sup>22</sup> of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPe), held on 22 January 2018, set out in the Facilitator's Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

20. The notes<sup>23</sup> of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks 'is testing options to assess the way forward'. The summary<sup>24</sup> of the meeting, held on 14 March 2018, set out in the Facilitator's Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated. The Facilitator's Note<sup>25</sup> does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say<sup>26</sup> that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.
21. The Council has since stated, in Appendix 1: Schedule A<sup>27</sup> to its letter<sup>28</sup>, dated 18 November 2019, that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect, as it referred to Sevenoaks District Council planning to meet its OAN in full. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note<sup>29</sup>, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are

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<sup>22</sup> Page 185 of SUP006a

<sup>23</sup> Pages 182-183 of SUP006a

<sup>24</sup> Page 185 of SUP006a

<sup>25</sup> Paragraphs 5.1 and 5.2

<sup>26</sup> Paragraph 6.1

<sup>27</sup> ED42A

<sup>28</sup> ED42

<sup>29</sup> West Kent SoCG Pilot Project Facilitator's Note, dated 10 April 2018, set out in 2a of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that 'the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue'. Paragraph 6.6 concludes that, 'each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need. Thus, the Councils are not yet in a position to reach agreement on the matter of housing supply'. As such, it is apparent that, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.
23. The minutes<sup>30</sup> of the West Kent Dtc meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the Dtc meetings refer to addressing the unmet need in Sevenoaks is at the Dtc meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted<sup>31</sup> that 'officers discussed the potential requirement for a follow up letter<sup>32</sup> to request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.
24. Although the Dtc statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.
25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have

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<sup>30</sup> Pages 191-192 of SUP006a

<sup>31</sup> Page 194 of SUP006a

<sup>32</sup> Letters were sent to neighbouring authorities requesting that they assist with Sevenoaks' unmet housing need in April 2019.

not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>33</sup> within the HMA.

26. In paragraph 13.2 of its HPS, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers 'did not receive any formal requests to address unmet housing need' from Sevenoaks District Council.
27. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.
28. In paragraph 1.04 of its HPS, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.
29. I appreciate that these neighbouring authorities say<sup>34</sup> that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does

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<sup>33</sup> Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council

<sup>34</sup> Letters dated 21 and 27 November 2019 set out in 3a and 3b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.

*Statements of Common Ground*

30. In order to demonstrate effective and ongoing joint working, paragraph 27 of the NPPF says that strategic policy-making authorities should prepare and maintain one or more Statements of Common Ground (SoCGs), documenting the cross-boundary matters being addressed and progress in co-operating to address these. These should be produced using the approach set out in national planning guidance and be made publicly available throughout the plan-making process to provide transparency.
31. The Council has submitted a number of SoCGs<sup>35</sup> as supporting documents, some of which were provided following the submission of the Plan for Examination, on 30 April 2019. These include several SoCGs with neighbouring authorities, including Tunbridge Wells Borough Council<sup>36</sup> and Tonbridge and Malling Borough Council<sup>37</sup>, which were signed on 21 and 30 May 2019 respectively. The agreed actions within these documents in respect of housing are to 'engage through the wider DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London's growth, large scale developments and opportunities for meeting any unmet need' and to 'undertake a 5 year review of the Local Plan'; and, 'to engage through the wider DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to strategic housing matters' respectively.
32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email<sup>38</sup> to MHCLG, dated 15 March 2019, the Council says that it 'is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.' However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They imply that these matters will be dealt with in any review of the Plan. However, the Duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination.
33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.
34. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents engagement in relation to a solution in the future, not the submitted Plan. At the DtC Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders'

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<sup>35</sup> SUP007a – SUP007i

<sup>36</sup> SUP007h

<sup>37</sup> ED6

<sup>38</sup> Email from James Gleave, dated 15 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan.

*The timing of engagement*

35. The Council refers to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. The Council says, in its letter<sup>39</sup> dated 18 November 2019, that it 'could have gone back to neighbours at this point', but decided not to, as it was felt that, as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated, 'it was therefore extremely unlikely that a higher unmet need would be met elsewhere'. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.
36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that 'all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other' at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that 'at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.' However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.
37. The full extent of unmet need only became apparent to the Council following the consideration of the responses to the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs. This would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage. However, there is no evidence to show that this occurred. Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have

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<sup>39</sup> ED42

been able to accommodate some of Sevenoaks' unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.
39. It is noted that neighbouring authorities have not indicated any willingness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks' housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need.

#### *Peer Review*

40. The peer review process undertaken by the Council consisted of advice<sup>40</sup> from Intelligent Plans and Examinations (IPE) in November 2018; a PINS' Advisory Visit<sup>41</sup> in February 2019; MHCLG advice<sup>42</sup>; and, a review of the Plan and PAS Workshop<sup>43</sup> on 24 April 2019.
41. The advice from IPE following its meeting with the Council on 1 November 2018, considered several matters, including housing need and delivery, however, it made no mention of the extent of unmet housing need in the District, or how this could be addressed. The purpose of the PAS Workshop, which was held six days before the Plan was submitted for Examination and led by IPE, was 'to provide advice on the implications of the DtC for the soundness assessment of the Plan' and 'to meet with neighbouring authorities,

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<sup>40</sup> Revised Note in respect of the preparation of the Sevenoaks Local Plan, prepared by Laura Graham of IPE, dated 4 December 2018, set out in 1a of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>41</sup> PINS Advisory Visit Note, prepared by Inspector Jonathan Bore, dated 6 February 2019, set out in 1b of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>42</sup> MHCLG correspondence, meeting 6 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>43</sup> Note on the Duty to Co-operate and the Local Plan, prepared by IPE, dated 7 May 2019, set out in 1d of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

so they could outline their respective positions regarding meeting development needs in West Kent.'

42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings<sup>44</sup> in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan<sup>45</sup>, prepared by IPe, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement<sup>46</sup>. This note concludes that 'none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working'.
43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, the PAS Workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.
44. The Council says that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, several points were raised in relation to the DtC at the Advisory Visit<sup>47</sup> carried out by the Planning Inspectorate in February 2019, as set out in the note<sup>48</sup> of this meeting.
45. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet need and that it could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

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<sup>44</sup> This revised figure took account of proposed changes to the Plan period being put forward by the Council for consideration during the Examination.

<sup>45</sup> ED42B

<sup>46</sup> SUP006, SUP006a, SUP006b, SUP006c and SUP006d

<sup>47</sup> The Planning Inspectorate carries out Advisory Visits to local planning authorities ahead of submission to provide advice on procedures and to help them achieve a sound plan.

<sup>48</sup> The PINS Advisory Visit Meeting Note is set out in 1b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C].

46. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS Workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the DtC Statement was not submitted until May 2019. Nor would it have had the benefit of the time available to an Inspector for the examination of that detailed and complex evidence or the discussion at the Hearing sessions.
47. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement<sup>49</sup> in May 2019, in which it states that 'KH<sup>50</sup> advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPe<sup>51</sup>, submitted in November 2019, does not state that the DtC has been met or that KH advised that this was the case.
48. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective.

*If a Plan is found to have failed the Duty to Co-operate, is it possible to proceed with the Examination?*

49. The Secretary of State wrote to the Planning Inspectorate, on 18 June 2019, in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority.
50. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also stresses the importance of Inspectors working in a pragmatic way with Councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.
51. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to

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<sup>49</sup> SUP006d

<sup>50</sup> KH was Keith Holland of IPe, working on behalf of PAS.

<sup>51</sup> ED42B

proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.
53. For the reasons set out above the DtC set out in Section 33A has not been complied with.

## **Overall Conclusion and Recommendation**

54. The DtC in Section 33A of the 2004 Act has not been complied with for the reasons set out above and I, therefore, recommend that the Local Plan is not adopted.

*Karen L Baker*

Inspector



Neutral Citation Number: [2020] EWHC 3054 (Admin)

Case No: CO/1417/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13/11/2020

**Before :**

**MR JUSTICE DOVE**

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**Between :**

**Sevenoaks District Court**  
**- and -**  
**Secretary of State for Housing Communities and**  
**Local Government**

**Claimant**

**Defendant**

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**Ms Saira Kabir Sheikh QC and Charles Merrett (instructed by Sharpe Pritchard) for the**  
**Claimant**  
**Richard Moules (instructed by GLD) for the Defendant**

Hearing dates: Thursday 3rd September 2020  
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**Approved Judgment**

## **Mr Justice Dove :**

### Introduction

1. The claimant is a local planning authority who prepared the Sevenoaks District Local Plan (“the SDLP”) for its administrative area. The claimant challenges the decision of the Inspector appointed by the defendant to undertake the examination of the SDLP who concluded that the claimant had failed to comply with the duty to cooperate set out in section 33A of the Planning and Compulsory Purchase Act 2004. The claim is advanced by the claimant on four grounds. The first ground is that the Inspector erred in law in failing to apply a margin of appreciation when considering the test under section 33A of the 2004 Act. Ground 2 is the contention that the Inspector failed to correctly interpret and apply the duty to cooperate, and in reality conflated that duty with the requirement that a plan be sound. Ground 3 is that the Inspector failed to have regard to material considerations and in particular to consider the material evidence that was placed before her. Finally, Ground 4 is a challenge based on the contention that the Inspector’s reasons were inadequate.
2. This judgment will firstly set out the facts in relation to the case, secondly, rehearse the relevant legal framework and, thirdly, deal with the submissions advanced and the conclusions reached in relation to the four grounds on which this application is advanced.

### The facts

3. The claimant’s administrative area contains a significant element of Green Belt as well as areas which are designated as an Area of Outstanding Natural Beauty. Its district forms part of the West Kent Housing Market Area (the “HMA”) and has further functional and economic relationships with London boroughs to the north of its administrative area.
4. The claimant began the preparation of its proposed SDLP in 2015 and at that time the evidence for it started to be collected. In September 2015 a Joint Strategic Housing Market Assessment (“SHMA”) was published, having been prepared jointly for the HMA by the claimant together with the other local planning authorities in the HMA: Tunbridge Wells and Tonbridge and Malling Borough Councils. Other technical work in relation to the assessment of the Green Belt and provision for gypsies and travellers was prepared by the claimant. The claimant undertook two rounds of consultation under the provisions of Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012, the first in relation to issues and options in August 2017, and then a further consultation on the draft SDLP from July through to September 2018. In a witness statement before the court to explain the factual background to the preparation of the SDLP, James Gleave, who is the Strategic Planning Manager for the claimant, explains that at the Regulation 18 stage of plan preparation the extent of any unmet housing need as a result of the SDLP’s proposals was unknown “because views were still being gathered on what the Plan ought to contain and the council’s ‘call for sites’ process remained open until October 2018”. Thus, Mr Gleave observes, that it was not clear what proportion of unmet housing need might arise in the claimant’s district.

5. Between 8 December 2018 and 3 February 2019 the claimant undertook the consultation required by Regulation 19 of the 2012 Regulations on the SDLP in its proposed submission version. The proposed submission version identified that based upon the defendant's standard methodology the annualised housing need for the claimant's district was 698 dwellings, giving rise to a total of 13,960 dwellings over the 20-year plan period from 2015 to 2035. The housing land supply which was proposed in the SDLP was 10,568 dwellings or approximately 75% of the total housing need derived pursuant to the standard methodology. The plan was submitted for examination on the 30 April 2019.
6. For the purposes of the examination the claimant prepared a Duty to Cooperate Statement ("the Statement") setting out its case and the evidence in support of the conclusion that the duty to cooperate had been satisfied in the preparation of the SDLP. The Statement presents the evidence in a number of themes. Firstly, it alludes to the preparation of a joint evidence base, referring to the SHMA set out above and other studies and plans which were jointly prepared with relevant authorities. Secondly, the Statement refers to discussions which had occurred with a wide variety of statutory bodies ranging from Natural England and the Environment Agency to Highways England and Network Rail. The Statement then turns to discussions with neighbouring authorities. Reference is made to the Kent Planning Officer's Group as a forum (complemented by the Kent Planning Policy Forum) which meet regularly to discuss common issues in relation to plan making and allied concerns. Annexed to the statement are the notes of meetings with other public bodies, and in particular neighbouring authorities, which had occurred since the outset of preparation of the SDLP in 2015. The statement then records the statements of common ground which had been signed with a wide variety of local authorities and public bodies in respect of the various cross-boundary strategic issues which were engaged with the SDLP process. Alongside this documentation the Statement also set out discussions which had taken place at an elected member level with adjoining local authorities and briefings which had occurred with local MPs. Finally, the Statement also sets out the elements of peer review to which the SDLP process had been subject since the Regulation 18 draft consultation.
7. Whilst it is clear that the duty to cooperate, so far as it was relevant to the SDLP process, engaged a number of strategic issues, for the purposes of this judgment it is necessary to focus upon the strategic issue of housing need since, as will be seen, that was the issue which was principally of concern to the Inspector. In that connection it is necessary to set out the contents of the statements of common ground with, in particular, the neighbouring authorities of Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council, along with the conclusions of the peer review which was undertaken and relied upon in relation to the housing issue.
8. A statement of common ground was agreed between the claimant and Tonbridge Wells Borough Council on the 21 May 2019. Having set out the issue in relation to unmet housing need within the SDLP the statement of common ground records as follows:
  - “2.1.5 Discussions have taken place with neighbouring authorities in the HMA to discuss assistance with any unmet need, but no authority has been in a position to assist SDC with its unmet need.

2.1.6 TWBC is currently preparing its second Regulation 18 version of the Draft Local Plan for consultation, which includes the vision, objectives and growth strategy, overarching strategic policies, place shaping policies and detailed Development Management Policies.

2.1.7 TWBC is also constrained by the Green Belt (22%) and the Area of Outstanding Natural Beauty (70%) as well as areas of flood risk and traffic congestion. The Regulation 18 Draft Local Plan identifies the need for 13,560 dwellings in accordance with the Standard Methodology. Taking into account homes already built since 2013 and sites benefiting from planning permission and allocations within the existing Site Allocations Local Plan, TWBC is aiming to allocate land to meet the remaining balance of 8,914 (Note: this is still subject to change following ongoing work) dwellings. TWBC is seeking to meet its full objectively assessed need across the borough through development at a number of settlements, strategic release of Green Belt at Paddock Wood/Capel to allow expansion of the settlement and a new garden settlement within the Green Belt at Tudeley also within Capel Parish.

2.1.8 It is understood that, at present, TWBC is unable to assist SDC with unmet housing need, due to the constraints on both local authorities, and their inability to meet housing needs beyond their own, irrespective of unmet needs elsewhere.

2.1.9 Consequently, both councils will continue to work together and identify the position as both TWBC and SDC prepare to review their Local Plan every 5 years.

#### Actions

TWBC and SDC will engage through the wider Duty to Cooperate forum with other neighbouring authorities outside the West Kent housing market area in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London growth, large scale developments and opportunities for meeting any unmet need.

TWBC and SDC to each undertake a 5 year review of their respective Local Plans.”

9. The position in the statement of common ground is supported by the material contained within Tunbridge Wells Borough Council’s Hearing Position Statement for the purposes of the examination. The Hearing Position Statement observes that up until 11 April 2019 there had been discussions in relation to matters, including the meeting of housing need, and that those discussions were reflected in the observations made by Tunbridge Wells Borough Council during the Regulation 19 consultation, where they stated that there should be no presumption that there was any capacity within the Tunbridge Wells Borough Council area to accommodate unmet need from another

authority area. The Hearing Position Statement records that on the 11 April 2019 Tunbridge Wells Borough Council received a communication from the claimant formally asking whether or not they were in a position to meet any of the claimant's unmet housing need. At the duty to cooperate workshop on the 24 April 2019 (which is addressed further below) Tunbridge Wells Borough Council made clear that they would not be able to meet any of the claimant's unmet housing need. The Hearing Position Statement does however record as follows:

“1.06 It is considered pertinent to note that if the request from SDC to meet its unmet need had been made at any point prior to the submission of TWBC's comments on Sevenoaks regulation 19 representations then those representations would have addressed this issue more fully.”

The Hearing Position Statement goes on to record the observations made within the Statement of Common Ground and set out above and to indicate that the position from their perspective remained the same.

10. Tonbridge and Malling Borough Council also provided a hearing statement for the purposes of the examination. In their hearing statement they explain that during the consultations on both the Regulation 18 and Regulation 19 versions of their own Local Plan they had not received any request from the claimant to address unmet housing need. In the hearing statement they set out that there had been regular meetings between Tonbridge and Malling Borough Council and the claimant to address cross-boundaries strategic matters engaging the duty to cooperate. The essence of the position which they placed before the Inspector is set out in the following paragraphs of their hearing statement:

“13.5. It is evident that TMCB faces similar constraints and challenges to Sevenoaks District Council for that part of the Borough covered by the West Kent HMA. However, TMBC's response during plan-making has and continues to be significantly different to that of Sevenoaks District Council.

13.6. TMCB has responded positively to the Government's policy for plan-making by addressing in full its assessed need for housing plus some flexibility to adapt to rapid change. This is summarised in the TMBC Spatial Topic Paper. This has been challenging but TMBC understands that if suitable patterns of development are to be delivered and if the Local Plan is to positively address the acute need for housing, as demonstrated by the median housing affordability ratio, then sufficient sites need to be allocated for development to ensure there is no unmet need. This includes the removal of approximately 160 hectares of land from the Green Belt in the West Kent HMA to provide for residential development, as explained in the TMBC Green Belt Exceptional Circumstance Topic Paper.

13.7 Before addressing the matter of whether or not the unmet housing need could be accommodated in Tonbridge & Malling Borough it is important to first question whether it is reasonable

for Sevenoaks District Council to expect TMBC to address it. Given the similarities between the two authorities (see above), TMBC considers that it is entirely inappropriate to ask the Borough Council to accommodate unmet housing need in an area with the same constraints that have been dismissed by Sevenoaks District Council. It is important to bear in mind that the part of Tonbridge & Malling Borough falling within the West Kent HMA is wholly within the Green Belt (with the exception of the settlements not washed over by the designation).

13.8 If Sevenoaks District Council had adopted a similar positive approach to meeting the housing development needs of their area in full, it is possible that there would be significantly less or no unmet need to consider. It is unreasonable to expect TMBC to not only meet their assessed need for housing in full but to accommodate unmet housing need from Sevenoaks District Council who are facing similar constraints.

...

13.19 To conclude, it would be unreasonable to expect Tonbridge & Malling Borough Council to accommodate unmet housing need from Sevenoaks District Council given that TMBC is facing very similar constraints and challenges and is planning to address in full its own assessed housing need. Not only would it be unreasonable but factors including Housing Market Areas, market capacity and infrastructure mean that TMBC could not accommodate the identified unmet housing need.”

11. In addition to the contributions made by the local authorities directly concerned in the duty to cooperate, representations were also made, in particular to the examination process, by other parties who were interested in the issue. Representations were made both for and against the conclusion that the duty to cooperate had been satisfied in the present case. Whilst some reliance was placed upon this material by both parties at the hearing of this case, it suffices to record that there were a number of participants in the examination who maintained that the claimant had not complied with the duty to cooperate and that this was a fundamental flaw in the preparation of the SDLP.
12. As set out above the claimant placed reliance in support of its contention that the duty to cooperate had been satisfied upon the peer review of the plan process which had been commissioned as a cross-check in relation to the process. The first element of this work was the invitation extended by the Planning Advisory Service (“PAS”) to the claimant to participate in a pilot project in relation to the preparation of statements of common ground. This invitation was extended to and accepted by both the claimant and also Tonbridge Wells Borough Council and Tonbridge and Malling Borough Council. The programme led to a sequence of meetings, culminating in the preparation of notes reflecting the outcome of the project, dated the 3 April 2018. Paragraph 5.2 of the note of the discussions indicates that the need to address the matter of unmet housing need was acknowledged on all sides as the most significant issue that needed to be addressed in any statement of common ground between the parties. The note then considers the question of housing need in the three districts in the HMA, and from paragraph 6.1

onwards sets out the position in each of the authorities, and thereafter at paragraphs 8.4-8.5 notes the risks in the current position. The note provides as follows:

“6.1 Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017. In Sevenoaks the OAN of 11,740 (578 dpa) compares with an indicative figure of 13,960 (698 dpa) based on the government’s standardised methodology. In Tunbridge Wells the SHMA gives an OAN of 696dpa, which is consistent with the government’s indicative figure of 692 dpa using the proposed standard methodology.

6.2 The situation in Tonbridge and Malling is more complex. The evidence base, which includes an up to date SHMA covering 2 housing market areas, gives an OAN of 696 dpa. This is significantly lower than the indicative figure of 859 dpa using the proposed standardised methodology. Members have agreed to continue with 696 dpa figure. The Council accepts the standardised methodology and will reflect this as national policy in its Local Plan. However it proposes to demonstrate that the higher figure is undeliverable based on past trends and capacity issues. This position will be supported by evidence including the housing deliverability study prepared by G L Hearn in September 2017. The Council’s concerns are clarified in more detail in its consultation response to Planning for the Right Homes in the Right Places.

6.3 The emerging Tonbridge and Malling Local Plan, if it continues to propose a housing supply which is lower than the standardised OAN, clearly presents a risk to finalising an agreed SoCG. Whilst at present neither Sevenoaks or Tunbridge Wells will require Tonbridge and Malling to accept unmet need, it is possible that the reverse may apply. Even if all three Councils sign up to a SoCG which includes a lower housing figure for Tonbridge and Malling than the standard methodology indicates, this could be undermined when its Local Plan is examined.

...

8.4 The greatest risk to this SoCG is the decision by Tonbridge and Malling to continue plan for a level of housing supply which is below the OAN identified by the government’s standard methodology. As Tonbridge and Malling takes its Local Plan forwards it will be relying on evidence which states that capacity and delivery issues prevent it from states that capacity and delivery issues prevent it from meeting the higher OAN.

8.5 Whilst both Sevenoaks and Tunbridge Wells are aiming to meet their standard methodology OANs, both are heavily

constrained by green belt and infrastructure issues and are unlikely to be capable of accommodating unmet need from Tonbridge and Malling. This pilot project is not the appropriate place to address this matter in detail. However if the final SoCG is to have any real meaning and to be robust in supporting the three Local Plans there will need to be some hard talking within the group on this matter. This is a potential showstopper in terms of the utility of the SoCG and its capability of serving its desired purpose”

13. At a later stage it emerged that the note of the 3 April 2018 (which the claimant had included within the appendixes to the statement) had in fact been superseded in a subsequent note dated 10 April 2018. It seems that the representative of Tonbridge and Malling Borough Council had, in response to receipt of the 3 April 2018 draft, made suggestions in relation to amendments to the draft, including the observation that the claimant would have elements of unmet housing need. Thus, paragraphs 6.1 and following of the note were redrafted as follows:

“6.1 During the short lifespan of this pilot project there have been several changes to both the policy background, for example the revised draft of the NPPF issued for consultation on 5 March 2018 and to the emerging evidence base which will support the three Local Plans. Consequently the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue. The current situation, at the end of the pilot project, is as follows.

#### Sevenoaks DC

6.2 In Sevenoaks the OAN of 12,400 compares with an indicative figure of 13,960 based on the government’s standardised methodology. With Regulation 19 submission planned to take place in early 2019 it likely to fall outside the NPPF transition period, therefore the higher figure will apply. However the district is highly constrained, with 93% of the district lying within the Green Belt and 60% within AONBs.

6.3 The Council is currently examining the potential of releasing some Green Belt land where a convincing exceptional circumstances case is made. This would mean that any proposed development would need to deliver evidenced social and community benefits as well as housing. Sites where this might be the case will be the subject of Regulation 18 consultation. This may increase the housing land supply but it remains unlikely that Sevenoaks DC Tonbridge and Malling DC will be able to meet its housing need in full.

#### Tonbridge and Malling BC

6.4 The evidence base for the Tonbridge and Malling Local Plan, which includes an up to date SHMA covering two housing

market areas, gives an OAN of 696 dpa. This is significantly lower than the indicative figure of 859 dpa using the proposed standardised methodology. However the position has changed since the pilot project began with the revised NPPF draft proposing a transitional period for introducing the standardised methodology of assessing housing need. Provided the Regulation 19 submission can be made within the transition period, as proposed by the Council, then the lower locally derived OAN can be used. This level of housing growth is considered deliverable.

#### Tunbridge Wells BC

6.5 When the pilot project commenced Tunbridge Wells BC was planning to meet its locally derived OAN as determined by the joint SHMA which was updated in 2017. The SHMA sets an OAN of 696 dpa for Tunbridge Wells, which is consistent with the government's indicative figure of 692 dpa using the proposed standard methodology. Recently updated evidence on strategic flood risk suggests that some re appraisal may be necessary, but the Council is still endeavouring to ensure that it can meet its own housing need.

#### Summary

6.6 Each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling BC is confident that it can meet its need, Sevenoaks DC and Tunbridge Wells BC have not yet completed the work needed to determine whether or not they can meet their housing need. Thus the Councils are not yet in a position to reach agreement on their housing needs. The councils are not yet in a position to reach agreement on the matter of housing supply.”

14. In autumn 2018 the claimant commissioned Intelligent Plans and Examinations (IPE) to undertake a review of the Regulation 18 draft of the SDLP, with a particular focus on the Green Belt and the question of exceptional circumstances. A meeting was held on 1 November 2018, and on the 4 December 2018 Ms Laura Graham, who had undertaken the review, produced a report of her advice. Within that advice she noted that there was “no absolute requirement in the NPPF to meet housing need”, but that if development needs could not be met outside the Green Belt it would be necessary to demonstrate through the sustainability appraisal process that the consequences of not meeting that need had been fully and properly addressed.
15. On the 17 December 2018 the claimant contacted the Planning Inspectorate (“PINS”) with a view to arranging an advisory visit in order to assess the plan which was at that stage in the midst of the Regulation 19 consultation (the Regulation 19 consultation closed on the 4 February 2019). On the 6 February 2019 the advisory visit from PINS was undertaken by an experienced Inspector, Mr Jonathan Bore. One of the important topics for discussion at that meeting was the change that the claimant was considering to altering the base date of the SDLP to 2019-35. The note of the advisory visit identifies

that the plan fell seriously short of meeting its housing need in full, based upon the standard method. In relation to the duty to cooperate the note of the meeting records as follows:

“The Duty to Cooperate

Sevenoaks haven’t sent formal letters asking other authorities to accommodate unmet need. They say they don’t want to, because no authorities are willing to help with unmet need and asking the question would sour relations with them. Some neighbouring authorities such as Tandridge may also have unmet need. There is a SoCG with other authorities and a MOU with Maidstone, but the Council did not say that there is constructive engagement among the neighbouring authorities to resolve the issue, nor could they point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated.”

16. The note goes on to record the comments on the issues made by Mr Bore at the meeting. In particular, within the comments on the issues he noted as follows:

“If the OAN really could not be accommodated within the District, I said that there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis. Currently, despite the MoU and SoCGs, this did not appear to exist in a positive form. I said that any Inspector would look closely at this in regard to whether the Duty to Cooperate had been fulfilled.”

17. The advisory visit by Mr Bore on behalf of PINS was followed by correspondence from the defendant seeking to understand how the visit had gone, and offering assistance from PAS in relation to guiding the future progress of the plan. This correspondence led to a meeting on the 6 March 2019 between Mr Gleave and a colleague from the claimant and representatives of the defendants. The notice of the meeting of the 6 March observes as follows:

“Sevenoaks asked whether MHCLG meets with LPAs on a regular basis following an Advisory Visit or whether there were particular concerns with the emerging Sevenoaks plan. MHCLG explained that following the AV the Department had been made aware that there were some potentially significant issues with housing numbers and Duty to Co-operate, and constraints including Green Belt. Given these could be potential ‘showstoppers’ MHCLG wanted to talk through the issues, find out what further work Sevenoaks may be doing in respect of these and to discuss whether there is any assistance MHCLG could provide as the authority prepares its plan for submission.

In terms of the Duty to Co-operate, Sevenoaks explained they had met regularly with neighbouring authorities at Officer and Member level to discuss x-boundary issues, of which housing

need was a standing item on the agenda. In addition, a regular Kent-Planning Officers Group was held at Kent County Council. This operates along similar lines to the ALBPO forum in London and serves to update colleagues on Local Plan preparation. Statements of Common Ground are currently being prepared with neighbours on strategic cross-boundary matters, including housing need.

...

DR advised that the balance between protecting the environment and meeting housing needs was a planning judgement that had to be made locally. SH set out that the approach the LPA took would need to be justified, both in terms of why the authority was unable to meet its own needs and the reasons behind neighbouring authorities not being asked to accommodate some of Sevenoaks needs.”

18. On the 11 April 2019 Mr Gleave, on behalf of the claimant, wrote to neighbouring planning authorities in relation to the progress that was being made in respect of the plan. They were also invited to an event which was being facilitated by PAS to be held later in the month. The correspondence contains the following in relation to the duty to cooperate:

“The Council is of the view that all authorities bordering Sevenoaks, and Kent County Council, have engaged actively and on an on-going basis to meet the provisions of the Duty to Co-operate. In particular, Statements of Common Ground (SoCGs) are in the process of being agreed to formally clarify if it is possible to meet unmet housing needs from adjoining areas. Notwithstanding the provisions of the SoCG and for the sake of completeness, I write to formally ask if is in a position to meet any of Sevenoaks’ unmet housing need as outlined above. In the event that this is not possible, I would also be grateful for your views on the preparation of a joint sub-regional strategy to address future housing requirements.”

19. The duty to cooperate workshop took place on the 14 April 2019 and a note was prepared minuting the meeting. An experienced former Inspector, Mr Keith Holland, facilitated the workshop. Updates were provided by the local planning authorities who attended and, in particular, the update from the claimant identified that the SDLP housing supply left a shortfall measured against the standard methodology requirement of approximately 1,900 dwellings across the plan period, equating to about 17%. The claimant provided a summary of the activities which they had undertaken in order to address the duty to cooperate. Following discussion of the issues a note records Mr Holland advising that in his view “SDC has done all it can and is able to demonstrate that it has satisfied the duty to cooperate requirement”. This note of the workshop then records further discussions in relation to the potential to a sub-regional strategy to address unmet housing needs across the area.

20. A note of these meetings held with PAS was also provided by IPe who undertook the work for PAS. Their note covers both the meeting which was held on the 17 April 2019 and a first meeting between Mr Gleave and his colleagues on behalf of the claimant and Mr Holland. The claimant's position as expressed in the SDLP was explained to Mr Holland in the meeting on the 17 April 2019 and noted as follows:

“2.2 The discussion focussed on the implications of the DtC for the soundness assessment of the SLP. At the time of the meeting, the Council's intention was to submit the SLP for examination at the end of the month (it was subsequently submitted on 30 April 2019). The discussion included a review of advice provided by Laura Graham of IPe and Jonathan Bore from the Planning Inspectorate (PINS). SDC feels that there is a degree of inconsistency between the PINS advice and that provided by IPe. SDC believe that the advice from PINS is based on a misunderstanding of the approach being adopted by the SDC. In the view of the SDC, PINS failed to fully appreciate that the council attempts unmet housing need as an exceptional circumstance justifying consideration of Green Belt (GB) land release. What PINS calls a “Council imposed impediment” (the provision of infrastructure for the existing community) is not the defining exceptional circumstance consideration – it is simply the logical requirement that any development in the GB needs to be accompanied by adequate infrastructure. In other words, SDC believes that PINS has placed too much emphasis on the infrastructure point and not enough on the unmet need consideration.”

21. The note prepared by IPe in relation to the workshop on the 14 of April 2019 provides as follows in relation to the views expressed in respect of the duty to cooperate:

“3.3 The message regarding the importance of the DtC and the way it is dealt with at local plan examinations was repeated. All parties present appreciate how important the local duty is and how it has the potential to derail examinations. Each of the councils present outlined the position they are in at present regarding their development plans. From the discussion, it is clear that none of the authorities present are in a position to help meet any unmet housing need generated by SDC. In fact, most of the authorities believe that they are unlikely to be able to meet their own needs. The discussion thus confirmed and reinforced the contention made in the Submission version of the SLP that the Council is unable to meet its own needs and cannot rely on the DtC to resolve the problem. The importance of preparing a clear and convincing narrative for the forthcoming SDC local plan examination was again stressed.

3.4 The importance of continuing to seek to meet development needs in West Kent through cooperative strategic working was discussed. In this regard, the need for a strategic approach to infrastructure was emphasised. KH explained the importance of

getting member involvement and buy-in to any strategic work and that the more formal the process, the more likely it was to convince a local plan examiner that the councils are doing all they can to use the DtC effectively. Cllr Piper expressed severe reservations about the likelihood of effective strategic planning because of what he described as an inconsistency between the political message provided by the government regarding the GB and the guidance in the NPPF. KH pointed out that under the DtC there is nothing to stop local authorities undertaking joint strategic planning of the sort that previously happened in the South East through SERPLAN (London and South East Regional Planning Conference). KH also explained that the policy in the NPPF makes it clear that where there are exceptional circumstances local authorities can revise GB boundaries, but that this must be done through their local plans and not through the development management process.”

22. On the 30 April 2019 the plan was submitted for examination. As set out above Statements of Common Ground with neighbouring authorities were produced as part of the examination process. The examination hearing sessions commenced on the 24 September 2019, and issues in relation to the duty to cooperate were canvassed on the first day of the hearing. On the 14 October 2019 correspondence was received by the claimant from the Inspector raising concerns that she had in relation to whether or not the claimant’s approach to the SDLP had met the requirements of the duty to cooperate. There then followed further correspondence between the claimant and the Inspector which it is unnecessary to rehearse in detail for the purposes of this judgment. Suffice to say, that during the course of that exchange of correspondence the claimant provided detailed responses and further documentation including, for instance, the corrected note of the 10 April 2018. By the 13 December 2019 the Inspector had confirmed her view that the claimant had not discharged the duty to cooperate and therefore indicated that unless the claimant intended to withdraw the plan from examination the only course available was for her to produce a report concluding that the plan was not legally compliant. On the 3 January 2020 the claimant requested that the Inspector issue her report as soon as possible. This led to the production of the Inspector’s final report issued to the claimant on the 2 March 2020 and comprising the decision which is the subject of this challenge.
23. The Inspector’s final conclusions in relation to the issues with respect to the duty to cooperate are set out in the decision which is under challenge. In order to provide the full context for the Inspector’s decision it is necessary to set out her conclusions at some length. At the outset of her decision the Inspector set out that the starting point for the examination was the assumption that the local authority had submitted what it considered to be a legally compliant and sound plan. She confirmed that this was the basis for her examination. She further set out by way of introduction that having reached conclusions in relation to the duty to cooperate she did not go on to consider whether the plan was sound or was compliant with other legal requirements. She points out that if the local planning authority cannot demonstrate that the duty to cooperate has been complied with then, under section 20(7A) of the 2004 Act, the examiner is bound to recommend non-adoption of the local plan. In her decision the Inspector addresses the evidence in relation to the duty to cooperate in the following paragraphs:

“17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.

18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement and Appendices and in Appendix 1: Schedule A attached to its letter, dated 18 November 2019, with the minutes of most of these meetings provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group and the West Kent Statement of Common Ground (SoCG) Pilot Programme group.

19. The minutes of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues and Options (Regulation 18), do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPE), held on 22 January 2018, set out in the Facilitator’s Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

20. The notes of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks ‘is testing options to assess the way forward’. The summary of the meeting, held on 14 March 2018, set out in the Facilitator’s Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

The Facilitator's Note does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.

21. The Council has since stated, in Appendix 1: Schedule A to its letter, dated 18 November 2019, that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect, as it referred to Sevenoaks District Council planning to meet its OAN in full. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that 'the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue'. Paragraph 6.6 concludes that, 'each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need. Thus, the Councils are not yet in a position to reach agreement on the matter of housing supply'. As such, it is apparent that, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.

23. The minutes of the West Kent DtC meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the DtC meetings refer to addressing the unmet need in Sevenoaks is at the DtC meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted that 'officers discussed the potential requirement for a follow up letter to

request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.

24. Although the DtC statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.

25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>1</sup> within the HMA.

26. In paragraph 13.2 of its HPS, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers 'did not receive any formal requests to address unmet housing need' from Sevenoaks District Council.

27. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need

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following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.

28. In paragraph 1.04 of its HPS, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.

29. I appreciate that these neighbouring authorities say that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.”

24. The Inspector went on to address the statements of common ground which had been prepared in order to deal with cross-boundary issues. Her conclusion in relation to those statements of common ground is set out as follows:

“32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email to MHCLG, dated 15 March 2019, the Council says that it ‘is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.’ However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They imply that these matters will be dealt with in any review of the Plan. However, the Duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination.

33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.

34. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents engagement in relation to a solution in the future, not the submitted Plan. At the DtC Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders' meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan."

25. The Inspector then proceeded to consider the question of the timing of the engagement in relation to, in particular, the extent of unmet housing need which was the strategic issue at the heart of her concerns in relation to the duty to cooperate. She sets out her conclusions in relation to this issue in the following paragraphs:

"35. The Council refers to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. The Council says, in its letter dated 18 November 2019, that it 'could have gone back to neighbours at this point', but decided not to, as it was felt that, as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated, 'it was therefore extremely unlikely that a higher unmet need would be met elsewhere'. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.

36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that 'all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other' at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that 'at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The

best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.’ However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.

37. The full extent of unmet need only became apparent to the Council following the consideration to the responses of the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs. This would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage. However, there is no evidence to show that this occurred. Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have been able to accommodate some of Sevenoaks’ unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.

39. It is noted that neighbouring authorities have not indicated any willingness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks’ housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been

significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need.”

26. The Inspector then proceeded to consider the peer review processes which had been undertaken by the claimant, in terms of external advice from IPE in November 2018, the PINS advisory visit in February 2019, the advice which had been received from the defendant and the review of the plan and the PAS workshop which had occurred on the 24 April 2019. Dwelling initially on the PAS workshop, and subsequently focusing on the other elements of peer review, the Inspector's conclusions are set out as follows:

“42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan, prepared by IPE, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement. This note concludes that ‘none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working’.

43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, the PAS Workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.

44. The Council says that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, significant concerns were raised in relation to the DtC at the Advisory Visit carried out by the Planning Inspectorate in February 2019, as set out in the note of this meeting.

44. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet

need and that it could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

45. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS Workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the DtC Statement was not submitted until May 2019. Nor would it have had the benefit of the time available to an Inspector for the examination of that detailed and complex evidence or the discussion at the Hearing sessions.

46. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement in which it states that 'KH advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPE, does not state that the DtC has been met or that KH advised that this was the case.

47. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective."

27. The final point addressed by the Inspector was whether it would be possible to proceed with the examination, applying the defendant's indication in correspondence with PINS that Inspectors should be pragmatic in getting plans into place. Her conclusions in relation to this point, and indeed the position overall, are set out in the following paragraphs of her decision.

"49. The Secretary of State wrote to the Planning Inspectorate, on 18 June 2019, in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority.

50. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also

stresses the importance of Inspectors working in a pragmatic way with Councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.

51. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.

53. For the reasons set out above the DtC set out in Section 33A has not been complied with.”

28. In the light of these conclusions the Inspector reached the overall decision that the duty to cooperate had not been complied with and therefore she was bound to recommend that the plan not be adopted.

The law

29. The SDLP, as a development plan document, has to be prepared in accordance with the provisions contained within Part 2 of the Planning and Compulsory Purchase Act 2004. Section 19 of the 2004 Act sets out certain requirements in relation to the contents of a development plan document. The relevant provisions of section 20 of the 2004 Act in relation to independent examination are as follows:

“20. Independent examination

(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.

(2) But the authority must not submit such a document unless-

(a) they have complied with any relevant requirements contained in the regulations under this Part, and

(b) they think the document is ready for independent examination.

...

(4) The examination must be carried out by a person appointed by the Secretary of State.

(5) The purpose of an independent examination is to determine in respect of the development plan document-

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound and

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.

...

(7) Where the person appointed to carry out the examination-

(a) has carried it out, and

(b) considers that, in all circumstances, it would be reasonable to conclude-

(i) that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, and

(ii) that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation, the person must recommend that the document is adopted and given reasons for the recommendation.

(7A) Where the person appointed to carry out the examination –

(a) has carried it out, and

(b) is not required by subsection (7) to recommend that the document is adopted, the person must recommend non-adoption of the document and give reasons for the recommendation.

(7B) Subsection (7C) applies where the person appointed to carry out the examination-

(a) does not consider that, in all circumstances, it would be reasonable to conclude that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, but

(b) does consider that, in all circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation.

(7C) If asked to do so by the local planning authority, the person appointed to carry out the examination must recommend modifications of the document that would make it one that-

(a) satisfies the requirements mentioned in subsection (5)(a), and

(b) is sound.”

30. As can be seen from the provisions of section 20, of particular note for present purposes is the provision contained in section 20(5) that the purpose of the independent examination includes an examination of whether the plan is sound, and also whether the local planning authority has submitted a document that has been prepared in compliance with the duty under section 33A of the 2004 Act in relation to its preparation. By virtue of the provisions contained within section 20(7), (7B) and (7C), where the Inspector determines that it would not be reasonable to conclude that the local planning authority had complied with the section 33A duty then the Inspector can neither recommend modifications nor adoption of the document. This is in effect what happened in the present case.

31. It is not disputed that the duty under section 33A of the 2004 Act applied to the preparation of the local plan by virtue of section 33A(3) of the 2004 Act. The nature and content of the duty is described in the following provisions of section 33A:

“33A Duty to co-operate in relation to planning of sustainable development

(1) Each person who is—

(a) a local planning authority,

(b) a county council in England that is not a local planning authority, or

(c) a body, or other person, that is prescribed or of a prescribed description, must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising

the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

(3) The activities within this subsection are—

(a) the preparation of development plan documents,

(b) the preparation of other local development documents,

(c) the preparation of marine plans under the Marine and Coastal Access Act 2009 for the English inshore region, the English offshore region or any part of either of those regions,

(d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs

(a) to (c) that are, or could be, contemplated, and

(e) activities that support activities within any of paragraphs (a) to (c), so far as relating to a strategic matter.

(4) For the purposes of subsection (3), each of the following is a “strategic matter”—

(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and

(b) sustainable development or use of land in a two-tier area if the development or use—

(i) is a county matter, or

(ii) has or would have a significant impact on a county matter.”

32. It will be noted from section 33A(7) that a person who is seeking to comply with the duty to cooperate must have regard to guidance issued by the defendant on how that duty is to be complied with. Material in that regard is contained both within the National Planning Policy Framework (“the Framework”) and in the Planning Practice Guidance

(“the PPG”). The relevant provisions of the Framework dealing with the duty to cooperate are set out in paragraphs 24-27 of the Framework as follows:

“Maintaining effective cooperation

24. Local planning authorities and county councils (in two-tier areas) are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries.

25. Strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans. They should also engage with their local communities and relevant bodies including Local Enterprise Partnerships, Local Nature Partnerships, the Marine Management Organisation, county councils, infrastructure providers, elected Mayors and combined authorities (in cases where Mayors or combined authorities do not have plan-making powers).

26. Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

27. In order to demonstrate effective and on-going joint working, strategic policy making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.”

33. Whilst addressing the provisions of the Framework it is worthwhile at this stage to note that the claimant’s argument includes the contention that the Inspector confused the requirements of the duty to cooperate with the examination of soundness required pursuant to the provisions of section 20(5). The policy in relation to whether or not a plan is sound is to be found in paragraph 35 of the framework in the following terms:

“35. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

- a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs and is informed by agreements with other authorities, so that

unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework.”

34. Turning to the PPG, it contains a considerable amount of guidance relating to the preparation of statements of common ground including their contents, subject matter and format. Of particular relevance to the issues in the present case are the provisions of the PPG dealing with the question of whether or not local planning authorities are required to reach agreement on strategic matters, and what should be done if they are unable to secure such agreements. The parts of the PPG dealing with this point are as follows:

“Are strategic policy-making authorities required to reach agreement on strategic matters, and what should an authority do if they are unable to secure these agreements?”

Strategic policy-making authorities should explore all available options for addressing strategic matters within their own planning area, unless they can demonstrate to do so would contradict policies set out in the National Planning Policy Framework. If there they are unable to do so they should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their plans for examination. Authorities are not obliged to accept needs from other areas where it can be demonstrated it would have an adverse impact when assessed against policies in the National Planning Policy Framework.

Inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or are not relying on the inspector to direct them. Where a strategic policy-making authority claims it has reasonably done all that it can to deal with matters but has been unable to secure the cooperation necessary, for example if another authority will not cooperate, or agreements cannot be reached, this should not prevent the authority from submitting a plan for examination. However, the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any

outcomes achieved; this will be thoroughly tested at the plan examination.”

35. In *Zurich Assurance Limited v Winchester City Council* [2014] EWHC 758 Sales J (as he then was) explained both the substance of the obligation imposed by section 33A and the role of the court in a challenge of the kind presently under consideration in the following terms:

“109. The duty to co-operate imposed by section 33A applies (so far as relevant in this case) in respect of the preparation of development plan documents “so far as relating to a strategic matter” (subsection (3)), as defined in subsection (4) (“sustainable development or use of land that has or would have a significant impact on at least two planning areas, [etc]”). The question of whether development or use of land would have a significant impact on two planning areas is a matter of planning judgment.

110. The obligation (see subsection (1)) is to co-operate in “maximising the effectiveness” with which plan documents can be prepared, including an obligation “to engage constructively [etc]” (subsection (2)). Deciding what ought to be done to maximise effectiveness and what measures of constructive engagement should be taken requires evaluative judgments to be made by the person subject to the duty regarding planning issues and use of limited resources available to them. The nature of the decisions to be taken indicates that a substantial margin of appreciation or discretion should be allowed by a court when reviewing those decisions.

111. The engagement required under subsection (2) includes, in particular, “considering” adoption of joint planning approaches (subsection (6)). Again, the nature of the issue and the statutory language indicate that this is a matter for the judgment of the relevant planning authority, with a substantial margin of appreciation or discretion for the authority.

112. WCC was required to have regard to the guidance about co-operative working given in the NPPF: subsection (7).

113. The limited nature of the role for the court in a case like the present is reinforced by the structure of the legislation in relation to review of compliance with the duty to co-operate under section 33A. The Inspector is charged with responsibility for making a judgment whether there has been compliance with the duty: section 20(5)(c) of the 2004 Act. His task is to consider whether “it would be reasonable to conclude” that there has been compliance with the duty: section 20(7)(b)(ii) and (7B)(b). A court dealing with a challenge under section 113 of the Act to the judgment of an inspector that there has been such compliance is therefore limited to review of whether the inspector could

rationally make the assessment that it would be reasonable to conclude that there had been compliance by a planning authority with this duty. It would undermine the review procedures in the Act, and the important function of an inspector on an independent examination, if on a challenge to a plan brought under section 113 the court sought to circumvent this structure by applying any more intrusive form of review in its own assessment of the underlying lawfulness of the conduct of the planning authority itself. A rationality standard is to be applied in relation to the decision made by the Inspector and in relation to the underlying decision made by WCC.”

36. In the subsequent case of *Trustees of the Barker Mill Estates v Test Valley Borough Council* [2017] PTSR 408 Holgate J endorsed and adopted the analysis of Sales J in *Zurich Assurance* (see paragraphs 55-57). Since the claimant places some reliance upon the conclusions of Holgate J in relation to the particular facts of that case it is necessary to set out Holgate J’s agreement in summary with Sales J, and then his analysis of the issues which arose in that case and how he resolved them. These points are dealt with in the following paragraphs of his judgment:

“58. In agreement with Sales J I consider that:—

(i) The question posed by section 20(7B)(b) of PCPA 2004 is a matter for the judgment of the Inspector;

(ii) The Court's role is limited to reviewing whether the Inspector could rationally make the assessment that

(ii) The Court's role is limited to reviewing whether the Inspector could rationally make the assessment that it would be “reasonable to conclude” that the LPA had complied with section 33A ;

(iii) It would undermine the structure of PCPA 2004 and the procedure it provides for review by an independent Inspector if, on a challenge made under section 113 , the Court sought to apply a more intrusive form of review in its assessment of the underlying lawfulness of the LPA's conduct or performance; form of review in its assessment of the underlying lawfulness of the LPA's conduct or performance;

59. The challenge under ground 2 is therefore directed to the Inspector's report, in particular paragraphs 10 to 14 where he stated:—

“10. On the first day of the Hearing a submission was made by a representor to the effect that the Council had failed in relation to the DtC [the duty to co-operate]. This was discussed in some detail at the Hearing, and in public correspondence between the representor, the Council and myself. The most important element of this submission was that the Council's identified affordable

housing need figure is 292 dwellings per annum (d.p.a.) (clarified by MM/5/1 ), with certain caveats, whereas the expected provision is 206 d.p.a. The Council put forward reasons for this position, but the DtC issue relates to the fact that the Council had not asked neighbouring authorities whether they could accommodate some or all of the identified shortfall.

11. There is nothing to suggest the extent to which any shortfall in affordable housing provision within Test Valley would lead to displaced demand affecting some or all of the eight adjoining authorities.

12. The objective of the DtC is to maximise the effectiveness of the plan making process. In this case the overall manner in which the Council has worked with other authorities, particularly but not exclusively in the southern part of the Borough, is impressive. In the light of their considerable experience, Council officers presented me with a very clear picture of the position of adjoining authorities in relation to affordable housing. To have made a formal request to adjoining authorities for assistance with affordable housing, when the Council knew full well what the answer would be, would not have been effective or productive.

13. In subsequent correspondence the representor also stated that there would be a shortfall in market housing, and that the DtC would additionally be triggered in this respect. However, as I conclude (below) that the RLP will meet the full OAN for market housing, this matter does not trigger the DtC.

14. The Council has clearly taken into account the wider strategic context and the interrelationships with neighbouring areas, particularly in terms of housing markets and employment patterns. I am satisfied that the Council has engaged constructively, actively and on an ongoing basis with relevant local authorities and organisations, and I conclude that the DtC has been met.

...

60. The Claimants submit that where an LPA cannot meet its own FOAN for affordable housing then it must “explore under the ambit of the duty to co-operate whether any unmet needs can be met within adjacent LPAs” (paragraph 68 of skeleton). The proposition is said to be based upon paragraphs 104 and 106 of the judgment of Hickinbottom J in *Gallagher* . But in fact the Judge did not determine any issue in relation to section 33A nor did he lay down the proposition for which the Claimants contend.

61. It is to be noted that the Claimants' proposition is limited in scope. This is not a case where non-compliance with section 33A is said to have occurred because the Defendant failed to address

the inclusion of a policy in its plan for meeting needs arising outside its area. The Claimants simply argue that TVBC should have “explored” with other LPAs the issue of whether the shortfall in meeting the FOAN for affordable housing in its area could be dealt with in their areas. In essence, this is the same complaint as that raised at the Examination, namely that TVBC failed to put this question to the other authorities.

62. The Claimants were not at all precise as to what the use of the term “explore” should be taken to mean, although it lies at the heart of the ground of complaint. By implication the Claimants recognise that TVBC was not in a position to complete other authorities to provide for TVBC's shortfall and that they might legitimately say that they were unable to assist. Here the word “explore” suggests obtaining sufficient information about affordable housing needs in the areas of other LPAs and their ability to satisfy their own needs and any additional needs from other areas. In the light of that information a plan-making authority could decide, as a matter of judgment, whether it would be worthwhile to pursue negotiations with one or more other authorities to assist with its shortfall.

63. In this case the Claimants made no attempt to show the Court that TVBC either lacked this information or that, in the light of the information it had, TVBC's judgment that there was no point in pursuing negotiations with other authorities on this point was irrational. In his reply, Mr Cahill QC confirmed that the only criticism of the Inspector's report is one of irrationality and is limited to the last sentence of paragraph 12, in which he had said that there had been no need for TVBC to make a “ formal request” to adjoining authorities when it knew full well what the answer would be. He also stated that no legal criticism is made of the penultimate sentence of paragraph 12 in which the Inspector said that TVBC's officers had given him a very clear picture of the position of adjoining authorities in relation to affordable housing.

64. In fact, paragraph 12 is a summary of what the Inspector had been told during the Examination. In inquiry document IN009 (dated 19 December 2014) the Inspector explained that the extent of cross-boundary working had been explained by TVBC not only in its “Duty to Co-operate Statement” but also in the Hearing sessions, including one devoted to affordable housing. TVBC had been actively engaged in the production of a number of informal strategies and evidence based studies with other authorities and stakeholders. The extent of the working with other authorities was described by the Inspector as “impressive”. It was from this information that he reached the judgment that TVBC's officers were “fully aware that other authorities would not be in a position to assist with any shortfall”. Plainly the

Inspector relied upon this information when writing paragraph 12 of his Report on the Examination.

65. When paragraph 12 of the Report is read properly in the context of the material which was before the Examination, the Inspector, in his review of TVBC's performance, was entitled to reach the conclusions that (i) they had obtained sufficient information from the cross-boundary work which had in fact taken place on whether adjoining authorities would be able to provide affordable housing to meet any part of needs arising within TVBC's area and that (ii) it would have been pointless to make a "formal request" for assistance in meeting TVBC's shortfall. It is impossible for the Court to treat to Inspector's conclusions as irrational and so ground 2 must be rejected."

37. In *R(on the application of St Albans City and District Council) v SSCLG and others* [2017] EWHC 1751 Sir Ross Cranston dealt with an application for judicial review in which it was contended that an Inspector's conclusion that the duty to cooperate had not been satisfied was unlawful. The factual circumstances of that case involved the claimant's argument that the Inspector had failed to properly take into account the polarised position or impasse which had emerged in relation to contentions between the claimant and the adjoining local planning authorities with respect to the housing market. Having accepted and endorsed the approach taken in *Zurich Assurance* and *Trustees of Barker Mills*, Sir Ross Cranston concluded that the reasons provided by the Inspector demonstrated that he was fully aware of the disagreement between the council and adjoining local planning authorities in relation to the definition of the housing market area and appreciated the issue. The judge was satisfied that the decision adequately reasoned the conclusions that the Inspector had reached. In paragraph 51 of the judgment Sir Ross Cranston went on to accept the defendant's submission "that once there is disagreement, I would add even fundamental disagreement, that is not an end of the duty to cooperate". He concluded that the duty to cooperate remained active and ongoing "even when discussions seemed to have hit the buffers". Whilst in reaching this conclusion he placed some reliance on a decision of Patterson J in *R(on the application of Central Bedfordshire Council) v SSCLG* [2015] EWHC 2167 (Admin), which the parties in the present case accepted could not be authoritative as it was a permission decision which did not contain a statement that it could be cited in accordance with the Practice Direction on the Citation of Authorities, 9 April 2001 and, furthermore, was overturned by the Court of Appeal in granting permission to appeal.. Nonetheless the observations of Sir Ross Cranston are in my judgment properly capable of being considered as free standing, relevant and reliable, bearing in mind the fact-sensitive nature of the judgment which has to be reached in each individual case in which the duty to cooperate is being examined, and taken in the context of the particular facts of the case he was considering.

#### Submissions and conclusions

38. On behalf of the claimant Ms Saira Kabir Sheikh QC advances the case on four grounds. The first ground is that the Inspector failed when reaching her conclusions to apply the margin of appreciation which ought to be afforded to the claimant pursuant to section 33A of the 2004 Act. It is Ms Sheikh's submission, based upon both the wording of the statute and also the decisions in *Zurich Insurance* and *Barker Mills*, that when

considering whether or not the claimant had discharged the duty to cooperate in preparing the plan the Inspector was required to afford a margin of appreciation to the claimant and she failed to do so. In particular Ms Sheikh relies upon the contention that the Inspector sought to substitute her own judgment for that of the claimant and adjoining authorities where, for instance, in paragraph 29 of her report she concludes that, notwithstanding the fact that the adjoining authorities indicated that there had been regular constructive and cooperative liaison, she was not satisfied that that had in fact taken place. The discarding of the opinions of adjoining authorities demonstrated that the Inspector had failed to afford the claimant the margin of appreciation to which it was entitled.

39. Moreover, Ms Sheikh disputes the contention that the Inspector applied the correct test in reaching her conclusions: whilst the Inspector made assertions about unmet housing need being met elsewhere outside the claimant's administrative area, in reality the claimant was fully aware from its engagement with neighbouring authorities that there was no possibility of unmet housing need being met elsewhere. The Inspector's approach, for instance in paragraph 37 of her report, demonstrates that the Inspector's focus was upon what a local planning authority might do in the event of unmet housing need arising and was not focused on the particular circumstances of the claimant and its own knowledge and judgment as to what might be expected from any dialogue with adjoining authorities. Effectively, the whole tenor of the Inspector's report reflects the substitution of her own judgment for that of the claimant, without affording the claimant the margin of appreciation to which they were entitled.
40. Ms Sheikh also contends that her approach to the statements of common ground illustrated a similar error. The statements of common ground illustrated the depth and extent of the claimant's engagement with adjoining authorities, and her assertion that these had been drafted too late to influence the plan misunderstood both her role and the proper approach to be taken to the duty to cooperate.
41. In response to these submissions Mr Richard Moules, on behalf of the defendant, submits that when the Inspector's report is read as a whole it is clear that she has applied the correct approach. She started from the proposition that the plan had been submitted by the claimant in what it considered to be a legally compliant and sound form. In paragraph 37 of her report she clearly applied the test of what it was "reasonable to expect" the claimant to have done in the circumstances which arose. Fundamentally, Mr Moules submits that the present case had little to do with the margin of appreciation, on the basis that the Inspector's judgment as to what the claimant had done demonstrated that in fact they had done nothing constructive to explore addressing unmet housing need at the appropriate time during the plan's preparation. The Inspector concluded that the claimant could reasonably have been expected to do something in the circumstances which arose when the extent of unmet need emerged, but in fact did nothing.
42. Moreover, Mr Moules maintains that the Inspector was entitled to scrutinise the assertions of the adjoining authorities and if she concluded that, having evaluated all of the available evidence, it was not "reasonable to conclude" that the duty to cooperate had been satisfied then she was entitled to reach the conclusion which she did. Further, in applying the statutory tests at paragraph 26 of the Framework, the Inspector needed to examine whether the claimant had taken reasonable steps to explore meeting its unmet housing need. In doing so the Inspector was not effectively adopting the

approach of asking what a hypothetical authority would have done but was rather discharging the statutory tests on the facts of this particular case. The undoubted existence of the margin of appreciation should not stand in the way or act as a disincentive to local planning authorities working together to help to solve difficult and controversial problems of, for instance, unmet housing needs where the authority areas are the subject of environmental constraints.

43. Turning to Ground 2, Ms Sheikh contends that in reaching her conclusions the Inspector failed to correctly interpret and apply the duty to cooperate and conflated it with the statutory requirement that the plan should be sound. Central to her submission is that the Inspector misdirected herself by working backwards from evidence which might go to the soundness of the plan to reach conclusions on whether or not the duty to cooperate had been discharged. She worked backwards from the existence of unmet need to reach a conclusion that there had been a failure to comply with the duty to cooperate. This confused and conflated the two issues of the duty to cooperate and soundness. The evidence of this error exists, for instance, in paragraphs 17 and 24 of the Inspector's report in which she focusses on the existence of unmet need and the failure to resolve that issue. Ms Sheikh submits that the reality was that at the stage that unmet need was clearly identified it was well known that it could not realistically be met elsewhere. In effect, the Inspector erroneously considered the duty to cooperate in the light of the unmet housing need, rather than examining the requirements of the duty to cooperate itself in order to understand whether it had been discharged. The issue of unmet need and whether the housing figures and delivery proposed by the SDLP were justified was an issue connected with soundness and not the duty to cooperate.
44. In response to these submissions Mr Moules contends, firstly, that the Inspector was careful to distinguish between the duty to cooperate and the requirements of soundness in the substance of her report. Secondly, Mr Moules submits that when the Inspector's decision is properly understood, it correctly distinguished between the duty to cooperate and soundness. The problem, as identified by the Inspector, did not lie in the existence of unmet housing need in and of itself but rather in the claimant's failure to engage with adjoining authorities constructively, actively and on an ongoing basis in order to consider an attempt to find a solution that that unmet housing need at the time when it emerged. The Inspector recognised, in particular in paragraph 39 of her report, that it may not be possible for the claimant's housing need to be met in full, but concluded that earlier and fuller proactive engagement might have made it "significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need". In truth, Mr Moules contends that the claimant highlights two paragraphs (paragraphs 17 and 24) which in fact exemplify the Inspector addressing and setting out the essence of the claimant's failure to engage in ongoing active and constructive engagement with the neighbouring authorities in relation to the strategic issue of unmet housing need, rather than confusing the questions arising under the duty to cooperate with those which arose in respect of soundness.
45. Turning to Ground 3, Ms Sheikh on behalf of the claimant submits that the Inspector failed to have regard to the available material evidence furnished by the claimant. The evidence demonstrated that the claimant was both aware that there would be an unmet need, but also as a result of its duty to cooperate discussions with adjoining authorities was aware that regardless of the scope of the unmet need neighbouring authorities would not be able to assist. This point is not grappled with, she submits, by the

Inspector, and, in particular, the Inspector fails to grapple with the extensive environmental constraints that each of the authorities have to work with. In addition, Ms Sheikh submits that the statements of common ground ought not to have been disregarded in the way the Inspector did by treating them as too late to influence the SDLP. In fact, that documentation reflected years of discussions between the authorities and was highly relevant to demonstrate that the duty to cooperate had been discharged. Further, the lack of a formal request for assistance from the claimant did not demonstrate non-compliance with the duty to cooperate: the reason that no formal request was made was because as a result of the exercise of the duty to cooperate the claimant was well aware that unmet need could not be met elsewhere.

46. In response to these submissions Mr Moules submits that, firstly, the Inspector addressed whether or not there had been discussion of meeting unmet need for a considerable time and concluded on the evidence, as she was entitled to, that there was no evidence to support the claimant's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities (see paragraph 35). Secondly, Mr Moules submits that the Inspector was clearly aware of the constraints under which both the claimant and the adjoining authorities operated: these were referred to at several points during the course of her report. Thirdly, the Inspector explained clearly her conclusion that the claimant had neither demonstrated that it had constructively and actively pursued solutions to the unmet housing need it had identified with its neighbours at the appropriate time during preparation of the plan, nor that cooperation with its neighbours was an impossibility in respect of meeting any of the unmet housing need arising. Fourthly, Mr Moules submits that, again, the Inspector clearly explained for good reason that the statements of common ground had arrived too late in the process to support the conclusion that the duty to cooperate had been complied with. Fifthly, the claimant's complaint in relation to the Inspector's view on the lack of the formal request to neighbouring authorities is submitted by Mr Moules to be simply another disagreement on behalf of the claimant with the Inspector's planning judgment that it was unreasonable for the claimant to do nothing by way of meaningful exploration of solutions to meet the identified housing need shortfall.
47. Finally, by way of Ground 4, Ms Sheikh submits that the Inspector failed to give adequate reasons for the claimant's failure to comply with the duty to cooperate or, alternatively, the Inspector's conclusion was irrational. In particular it is submitted that the Inspector failed to provide adequate reasons as to why weight was placed upon the claimant's failure to make a formal request for assistance earlier and further failed to adequately reason why she disregarded the evidence of neighbouring authorities in relation to the duty to cooperate, or why she suggested that the statements of common ground did not provide evidence of compliance to cooperate. In the light of the evidence the Inspector's conclusions were irrational.
48. In response to these submissions Mr Moules submits that the Inspector's conclusions on each of the issues relied upon were clear and entirely rational. As the Inspector explained, had formal requests for the adjoining authorities been made as soon as the full extent of the claimant's unmet housing need became apparent then it may have been possible through constructive engagement to achieve a more positive outcome and maximise the effectiveness of the plan (see paragraphs 37-39 of the Inspector's report). The Inspector's reasoning showed that the neighbouring authorities' views were taken

into account, but as the Inspector explains they could not allay the concerns that she had clearly identified. The statements of common ground were, for the reasons the Inspector gave, provided too late to furnish evidence of compliance with the duty to cooperate in relation to the unmet housing need identified. Finally, Mr Moules submits that it is unarguable that the Inspector's conclusion was irrational.

49. In forming conclusions in relation to these competing submissions it is necessary, in my view, firstly to analyse the substance of the legal issues which arise in relation to the duty to cooperate under section 33A of the 2004 Act. Thereafter, secondly, it is important in my view to be clear as to the nature of the decision which the Inspector reached and the specific basis for her conclusions.
50. As described in paragraph 33A(2)(a) the duty to cooperate, when it arises, requires the person who is under the duty "to engage constructively, actively and on an ongoing basis" in relation to the preparation of a development plan document (see paragraph 33(A)(3)(a)) "so far as relating to a strategic matter" (see paragraph 33A(3)(e)) to "maximise the effectiveness" of the activity of plan preparation. Whilst during the course of her submissions Ms Sheikh points out that activities were undertaken by the claimant in relation to a broad range of strategic issues concerned with infrastructure and wider environmental designations, and she relied upon the numerous strategic matters with which the claimants were concerned in preparing the SDLP, it is in my view clear that the duty to cooperate arises in relation to each and every strategic matter individually. There was, therefore, no error involved by the Inspector in the present case focussing upon one of those strategic matters in reaching her conclusions in respect of the duty to cooperate.
51. I accept the submission made by Ms Sheikh that discharging the duty to cooperate is not contingent upon securing a particular substantive outcome from the cooperation. That was a proposition which was not disputed by Mr Moules. I accept, however, his submission that the duty to cooperate is not simply a duty to have a dialogue or discussion. In order to be satisfied it requires the statutory qualities set out in section 33A(2)(a) to be demonstrated by the activities comprising the cooperation. As Sales J observed in paragraph 110 of *Zurich Assurance*, deciding what ought to be done to meet the qualities required by section 33a(1)(c)(2)(a) "requires evaluative judgments to be made by the person subject to the duty regarding the planning issues and use of limited resources available to them." As Sales J also observed, bearing in mind the nature of the decisions being taken a court reviewing the decision of an Inspector making a judgment in respect of whether there has been compliance with the duty will be limited to examining whether or not the Inspector reached a rational decision, and will afford the decision of the Inspector a substantial margin of appreciation or discretion. It is against the background of these principles that the submissions of the claimant fall to be evaluated.
52. The second issue is, as set out above, to be clear as to the nature of the decision which the Inspector reached. In that connection, in my judgment the submissions made by Mr Moules in relation to Ground 4 are plainly to be preferred. Having carefully examined the Inspector's conclusions they were, in my judgment, clearly expressed and set out in detail the reasons for the conclusions that she reached. I am unable to identify any defect in the reasoning of her report which sets out clearly and in full detail her conclusions and the reasons for them.

53. It is clear from the report that the conclusions of the Inspector were that the claimant became aware of the detailed extent of its unmet housing need after the Regulation 18 consultation which ceased on the 10 September 2018 (see paragraph 27 and paragraph 35). The first minutes of a duty to cooperate meeting referring to addressing unmet housing need in the claimant's area was on 13 March 2019, after the Regulation 19 consultation on the SDLP, and seven weeks prior to submission of the SDLP for examination (see paragraph 23). The minutes of the duty to cooperate meetings provided "no substantial evidence that the council sought assistance from its neighbours in meeting its unmet housing need" prior to the publication of the Regulation 19 version of the SDLP (see paragraph 24). The claimant did not request assistance from Tunbridge and Malling Borough Council during the course of Regulation 19 consultation on the Tonbridge and Malling Local Plan between 1 October and 19 November 2018 to assist with unmet housing need in the claimant's area (see paragraph 27), and only made formal request to ask whether or not Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council would assist in meeting the claimant's unmet housing need after the Regulation 19 consultation had been completed and just prior to submitting the plan for examination (see paragraphs 27 and 28). The statements of common ground were completed after the submission of the plan for examination and prepared too late to influence the content of the plans preparation (see paragraphs 32 and 33). Whilst the claimant contended that discussions had already indicated prior to the extent of unmet housing need emerging following the Regulation 18 consultation and further engagement was not undertaken because it had already been indicated that an unmet need of 600 dwellings could not be accommodated, the Inspector concluded that there was no evidence to support the assertion that discussions had already indicated an unmet need of 600 dwellings could not be accommodated (see paragraph 35).
54. Thus, the Inspector concluded in paragraph 37 of her report that it was reasonable to expect that the claimant would, after the extent of the unmet housing need emerging following the Regulation 18 consultation, have undertaken constructive engagement in an attempt to resolve the issue prior to the publication of the Regulation 19 version of the plan. Whilst that process may or may not have been fruitful, the Inspector observed that "it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place". The peer review process did not assist: the PAS workshop was undertaken at a very late stage the plan process and "if the engagement had occurred as soon as the council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome" (see paragraph 43). The visiting Inspector raised issues which were not adequately resolved before the plan was submitted (see paragraph 44).
55. From this distillation of the Inspector's conclusions and reasoning it is clear to see that there is no substance in the claimant's grounds. In my view it perhaps makes most sense to start with the claimant's Ground 2, the contention that the Inspector failed to properly interpret and apply the duty to cooperate and conflated it with the requirement for soundness. In my view there is no basis for this contention when the Inspector's conclusions and reasons are properly understood. Firstly, as to the application of the test it is clear from paragraph 37 that the Inspector directed herself to whether, in accordance with the requirements of section 20(7)(a)(ii), it was reasonable for her to conclude that the duty to cooperate had been complied with. She found that once the

extent of the unmet need emerged after completion of the Regulation 18 consultation on the SDLP, the claimant should have contacted its neighbouring authorities and engaged constructively in an attempt to resolve the issues arising from its unmet housing needs. Her conclusion that there was no communication, let alone engagement, in between the emergence of this issue and embarking upon a Regulation 19 consultation underpinned her conclusion that there had not been constructive, active and ongoing engagement in relation to that issue. It is clear from paragraphs 37 and 43, and indeed from the totality of her reasoning, that what she was scrutinising and assessing was not the identification of a particular solution for the strategic issue of unmet housing need, but rather the quality of the manner in which it had been addressed. Her conclusions were, based on her factual findings as to what in fact happened after the Regulation 18 consultation disclosed the extent of the unmet housing need, that no constructive and active engagement was undertaken at the time when it was required in advance of the Regulation 19 version of the SDLP being settled. These conclusions properly reflected the statutory requirements and the evidence which was before the Inspector and do not disclose any misdirection on her part, or confusion between the requirements of the duty to cooperate and the requirements of the soundness with respect to this strategic issue.

56. Turning to Ground 1 there is force in the submission made by Mr Moules that, in truth, this is a clear-cut case based on the findings that the Inspector reached. As set out above, the Inspector concluded (as she was entitled to on the evidence before her) that at the time when the strategic issue in relation to unmet housing need crystallised, there was no constructive, active or ongoing engagement and, indeed, the matter was not raised with neighbouring authorities until after the Regulation 19 consultation on the SDLP and at a very late stage in plan preparation. Requests made of neighbouring authorities on the 11 April 2019 post-dated the Regulation 19 consultation and were shortly prior to the plan being submitted. In those circumstances the Inspector was entitled to conclude that these discussions were not taking place at a time when they could properly inform and influence plan preparation and maximise the effectiveness of that activity. As the Inspector recorded in paragraph 37, she found, as she was entitled to, that had engagement occurred after the Regulation 18 consultation and prior to the Regulation 19 consultation “it might have resulted in a more positive outcome”. Further, as the Inspector recorded, the possibility that it may have led to the same outcome was nothing to the point. Effective, constructive and active engagement had not taken place at the time when it was required. By the time there was communication in respect of the issue it was too late.
57. Although the claimant stressed its belief that whenever called upon to do so neighbouring authorities would have refused to provide assistance, I am not satisfied that this provides any basis for concluding that the Inspector’s conclusions were irrational. Indeed, as she notes, Tunbridge Wells Borough Council noted in its written material that if the request to address the claimant’s unmet housing need had been made at any point prior to the submission of its comments on the Regulation 19 version of the plan then their response would have addressed the issue more fully. There was, therefore, evidence before the Inspector to support her judgment in this respect. In the light of these matters I am unable to accept that there is any substance in the claimant’s Ground 1. There is no justification for the suggestion that the Inspector failed to afford a margin of appreciation to the claimant in reaching her conclusions; the clear-cut nature of the conclusions which the Inspector reached were fully set out and ultimately

the Inspector was required by section 20 of the 2004 Act to reach conclusions in relation to the statutory test which she did.

58. Turning to the submissions in relation to Ground 3, I am unable to accept that the Inspector failed to have regard to the material which was available to her in reaching her conclusions. It is clear to me from the detail of the report that the Inspector had regard to all of the evidence that had been placed before her. The Inspector clearly addressed the detailed material in relation to the duty to cooperate meetings and the preparation of joint evidence. She also engaged with the existence of statements of common ground and the views of the neighbouring local authorities. She gave careful consideration to the peer review which had been undertaken and reflected on the responses from adjoining authorities to request they meet unmet housing need from the claimant and the environmental constraints under which the claimant had to operate. In my view the submissions advanced in respect of Ground 3 effectively amount to a disagreement with the Inspector on the conclusions which she ought to have forged based upon the material which was before her. Ultimately, the availability of this evidence did not dissuade the Inspector from reaching the conclusions which she did in respect of quality and timing of the engagement in the present case: the generality of the position presented by the claimant does not gainsay the detailed conclusions reached by the Inspector as to the nature of the duty to cooperate activities, or lack of them, at the critical point of time when the extent of nature of the unmet housing need emerged at the conclusion of the Regulation 18 consultation. In my view it is clear that the Inspector had careful regard to all of the material which was placed before her and reached conclusions which, I have already set out in respect of my views on Grounds 1 and 2, were lawful and appropriate.
59. I have already expressed my view as to the quality and nature of the reasons provided by the Inspector in respect of the examination. In my view her reasons were clear, full, detailed and justified. In addition, under Ground 4 it is contended that the conclusion which she reached was irrational. In my judgment there is no substance whatever in that contention. For the reasons which I have already given the Inspector's conclusions were clearly open to her and based upon a proper appreciation and application of the relevant statutory tests.
60. It follows that for all of the reasons set out above I am satisfied that there is no substance in any of the grounds upon which this claim is advanced and the claimant's case must be dismissed.



## Appeal Decision

Inquiry held on 9-12 December 2014

Site visit made on 12 December 2014

by **John Felgate BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 January 2015

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**Appeal Ref: APP/A1720/A/14/2220031**

**Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Village Green PLC against the decision of Fareham Borough Council.
  - The application Ref P/13/1121/OA, dated 20 December 2013, was refused by notice dated 11 March 2014.
  - The development proposed is "*erection of 37 dwellings together with associated access and parking for existing play area*".
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### DECISION

1. The appeal is allowed and planning permission is granted for the erection of 37 dwellings together with associated access, and parking for the existing play area, on land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick, Hampshire, in accordance with the terms of the application, Ref P/13/1121/OA, dated 20 December 2013, subject to the conditions set out in the attached schedule.

### PRELIMINARY MATTERS

2. The planning application seeks outline permission with all matters reserved except for access, which is proposed to be from Swanwick Lane, adjacent to the existing play area. The application is accompanied by an 'Indicative Layout' (Plan No PP1220-101-00, Revision P2), but in relation to all matters other than access, that plan is purely illustrative.
3. The Council's decision notice listed four refusal reasons (RRs). RR2 related to affordable housing and ecological mitigation. Since then however, the appellants have entered into a legal undertaking which provides for ecological mitigation by way of a financial contribution. And with regard to the affordable housing, the Council now accepts that this could be secured by condition. RR2 was therefore not pursued at the inquiry.
4. RR3 related to noise. Subsequently, the appellants have submitted a noise survey report. In the light of this report, it is now agreed that any issues relating to this matter could also be deal with by condition.
5. RR4 contained a list of the submitted plans. The Council now accepts that since this did not in fact state any reasons for objection, it should not have

appeared as an RR. The only one of the original refusal reasons that remains at issue between the parties is therefore RR1.

6. As well as dealing with ecological mitigation, the legal undertaking provides for the implementation of a landscaping scheme and a woodland management plan, and the setting up of a management company with responsibility for the upkeep and maintenance of the landscape and woodland areas within the proposed development.

## **PLANNING POLICY BACKGROUND**

### **The development plan**

#### *The Fareham Borough Local Plan (the FBLP), adopted March 2000*

7. The FBLP was designed to accord with the former Hampshire Structure Plan Review. Its intended plan period was 1999-2006. In 2007, a large number of the FBLP's policies were saved by a direction from the Secretary of State. The majority of those have since been replaced by the 2011 Core Strategy, but some have continuing effect.
8. Saved Policy DG4, which applies throughout the District, states that development will be permitted, provided that various requirements are met. These include that proposals should not detract from the natural landform, and should respect inward and outward views.
9. On the proposals map, the appeal site is included in an area designated as countryside.

#### *The Fareham Core Strategy (FCS), adopted August 2011*

10. The FCS has a plan period of 2006-26. It was intended to conform with the regional strategy contained in the South-East Plan (the SEP), approved in May 2009. It was also prepared in the context of the then-emerging South Hampshire Strategy (the SHS), a non-statutory sub-regional plan by the Partnership for Urban South Hampshire (PUSH), a consortium of 11 local authorities<sup>1</sup>.
11. Policy CS6 sets out the development strategy, which is to focus new development in various specified locations. One of these is the Western Wards, which includes Lower Swanwick. Priority is to be given to the re-use of previously developed land within defined settlement boundaries<sup>2</sup>. Policy CS9 sets out further criteria for development in the Western Wards, which include protecting the setting of the existing settlements.
12. Outside defined settlement boundaries, Policy CS14 states that development will be strictly controlled, to protect the landscape character, appearance and function of the countryside and coastline. In coastal locations, the policy seeks to protect the special character of the coast, when viewed from land or water.
13. Policy CS17 seeks to encourage good design which responds positively to the key characteristics of the area, including its landscape.

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<sup>1</sup> The SHS later became informally adopted by the partnership authorities in October 2012

<sup>2</sup> The FCS does not include any new proposals map of its own. The plan is accompanied by an 'interactive proposals map', but this is stated not to form part of the adopted plan itself. In the absence of any other indication, it appears that references in the FCS to 'defined settlement boundaries' relate to the boundaries shown on the proposals map of the FBLP. This interpretation is not disputed in the present appeal.

## **Emerging plans**

*The draft Development Sites and Policies DPD (the DSP), submitted June 2014*

14. The DSP is intended to provide for the development requirements identified in the FCS up to 2026, and also the increased levels of housing and employment proposed over the same period in the SHS. The DSP covers the whole of the District except for the proposed new community of Welborne.
15. On the DSP's proposals map, the appeal site forms part of an 'area outside of defined settlement boundaries'. In such areas, draft Policy DSP7 proposes a presumption against new residential development.
16. At the time of writing this decision, the draft DSP has completed the hearing stage of its public examination, and is awaiting the Inspector's report. Until then, the plan remains subject to unresolved objections in respect of the policies and designations relevant to the present appeal. As such, it carries limited weight.

*The draft Welborne Plan (the WP), submitted June 2014)*

17. The draft WP is an area action plan which sets out policies and proposals for the development of the new settlement, over a period running to 2036. At present, the WP has reached the same stage as the DSP, and is awaiting the Inspector's report. In so far as the WP is relevant to the present appeal, it is subject to unresolved objections, and thus its weight is limited.

## **National policy and guidance**

*The National Planning Policy Framework (the NPPF)*

18. The NPPF states at paragraph 6 that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 9 states that sustainable development involves seeking positive improvements in the quality of the environment and in people's quality of life; amongst other things, this includes widening the choice of high quality homes. Paragraph 14 states that there is a presumption in favour of sustainable development.
19. Paragraph 17 sets out core planning principles. These include proactively driving and supporting sustainable economic development to deliver the homes and other development that the country needs. Every effort should be made objectively to identify and then meet those needs, and to respond positively to opportunities for growth. The core principles also include recognising the intrinsic character and beauty of the countryside, conserving and enhancing the natural environment, and focusing development in sustainable locations.
20. At paragraph 47, the NPPF seeks to boost the supply of housing significantly. Local plans should aim to meet the full, objectively assessed need for market and affordable housing, as far as is consistent with other NPPF policies. Paragraph 49 states that policies for the supply of housing should not be considered up to date if a 5-year supply of deliverable housing sites cannot be demonstrated.
21. Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes. Paragraph 114 seeks to maintain the character of the undeveloped coast and its distinctive landscapes.

22. Paragraphs 186 and 187 requires that all planning decisions should be approached positively, by looking for solutions rather than problems, and that applications for sustainable development should be approved where possible.

*Planning Practice Guidance (PPG)*

23. The PPG provides further guidance on the policies in the NPPF. Paragraph 8-001 makes it clear that the NPPF's aims for the natural environment are not limited only to areas that are formally designated. Sections 2a and 3 contain more detailed advice on assessing housing needs and land availability, to which I will refer further below.

**MAIN ISSUES**

24. In the light of the matters set out above, and all of the submissions before me, both oral and written, it seems to me that the main issues in the appeal are:
- Whether it can be demonstrated that the District has a 5-year supply of land for housing development, to satisfy the requirements of the NPPF;
  - And the proposed development's effects on the character and appearance of the area.

**REASONS FOR DECISION**

**Housing land supply**

25. The Council claims a housing land supply of over 13 years. The appellants contend that the true figure is only just over 3 years. The divergence results firstly from a fundamental difference as to the size of the requirement that is to be met, and also from various other smaller, but significant differences in both methodology and assumptions. I will deal with each of these differences below.
26. The Council's land supply calculations are based on meeting the requirements in FCS Policy CS2, plus a small uplift reflecting the additional requirements suggested in the 2012 SHS. The appellants accept that on this basis a 5-year supply can be demonstrated, but they contend that the FCS/SHS figures are the wrong basis for the calculation.
27. The appellants' own calculations are based on the housing need projections in the Strategic Housing Market Assessment (SHMA) report for South Hampshire, published in January 2014. The Council, whilst disputing the use of the SHMA figures over the FCS, maintains that a 5-year supply can be demonstrated on this basis too.

*The Council's preferred housing requirement - based on FCS Policy CS2*

28. The PPG advises that the starting point for assessing the 5-year land supply should be the housing requirement figure in an up-to-date adopted local plan, and that considerable weight should be given to such a figure (paragraph 3-030). In the case of Fareham, the FCS is an adopted plan, and is only a little over 3 years old since its adoption. In such circumstances, it might often be unnecessary to look any further.

29. However, the PPG goes on to make it clear that this is not always the case:

*"(Considerable weight should be given to the housing requirement figures in adopted local plans) ...unless significant new evidence comes to light. It should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs.*

*Where evidence in local plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered."*<sup>3</sup>

30. In the present case, the FCS's housing requirement was directly derived from the now-revoked SEP. That plan was itself based upon an earlier version of the SHS, approved by the member authorities as long ago as 2005, which in turn was based on evidence necessarily dating back to before that time. Having regard to the PPG advice therefore, it seems to me that the FCS appears to be an example of the kind of local plan that is envisaged as being potentially out-of-date: that is, one where the evidence base dates from long ago, and where circumstances have changed so that the plan may not now adequately reflect current needs.
31. Furthermore, the FCS pre-dates the NPPF. As already noted, the NPPF places emphasis on ensuring that local plans set out to meet the full objectively assessed need (OAN) for housing, as far as is consistent with other relevant policies. This is a significant change compared to the previous national policy in Planning Policy Statement 3 (PPS3), which was in place at the time when the FCS was adopted. Although the relevant part of the NPPF (paragraph 47) is couched in terms that relate principally to plan-making, the Courts have determined that the same principles should be assumed to apply equally in decision-making, including development control decisions<sup>4</sup>. In the Borough of Fareham, the Council accepts that the FCS was not informed by any assessment of full OAN, and neither does it attempt to explore how far the OAN could be met. It follows that, in respect of matters relating to housing needs and targets, the policies of the FCS cannot be said to be consistent with the approach advocated in the NPPF. Paragraph 215 of the latter makes clear that in such cases, development plan policies may carry less weight relative to national policy and other considerations.
32. It is true that the Council's land supply calculations are not reliant solely on the FCS, because they also take account of the 2012 SHS, which is a more recent document, based on data that is more up to date than the FCS. But the SHS, like the FCS, is not derived from any assessment of full OAN, and does not address the question of what is the OAN, or whether it can be met. In the absence of knowing the full OAN, it seems to me that the 5-year supply exercise cannot serve its intended purpose. Consequently, merely adding an SHS element onto the Policy CS2 housing requirement does not overcome the fundamental shortcomings of the FCS itself, or those of any land supply calculations based on it.
33. I therefore conclude that the weight that can be given to the Council's calculations, based on the FCS and the SHS, is limited. This being so, it seems to me that the next step must be to look at any other available evidence of housing needs, and to assess whether, for the purposes of this appeal, this is likely to provide a better guide to OAN.

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<sup>3</sup> PPG 3-030 (emphasis added)

<sup>4</sup> Gallagher Homes Ltd and Lioncourt Homes Ltd v Solihull MBC: [2014] EWHC 1283 (Admin)

*The alternative housing requirement - based on OAN*

34. I therefore turn to the appellants' proposed alternative, of using the figures from the 2014 SHMA report. In considering the SHMA, I have taken particular account of the letter on this subject from the Minister of State for Housing and Planning, issued on 19 December 2014, after the close of the inquiry, and the appeal parties' comments on the contents of that letter.
35. In the case of the South Hampshire SHMA, there can be no doubt that the report's intention and main purpose is to quantify the OAN, for the sub-region as a whole, and for its constituent housing market areas (HMAs) and districts. This aim is made clear, both in the report's own introduction, and in the officers' report which accompanied it to the PUSH joint committee, in January 2014. The SHMA report examines in considerable detail the various alternative demographic projections, market signals, economic trends, and the needs of different groups, including the need for affordable housing. Having done so, it presents a number of housing need scenarios, reflecting a range of differing assumptions. Without question, this is a substantial body of work, and one that appears both comprehensive and thorough.
36. The SHMA report pre-dated the coming into force of the PPG. However, it was prepared in the light of the earlier draft version, and against the established background of the NPPF, and its methodology appears broadly consistent with the subsequent guidance. The SHMA has yet to be fully tested, but nonetheless, it has evidently been accepted by the PUSH authorities, including Fareham, as a basis for the forthcoming review of the SHS and subsequent local plans. Moreover, the very fact that the SHMA has been commissioned jointly, on behalf of all the South Hampshire authorities, gives it added weight.
37. Certainly, the SHMA figures have not been moderated to allow for any constraints, or to take account of any opportunities for cross-boundary co-operation. However, these are not necessary for the purposes of defining the OAN. A good deal more work will be required before the SHMA figures can be translated into proposed housing policy targets. But that does not prevent those figures from being used in a 5-year land supply calculation now, because this is exactly what the PPG advises in a situation where the adopted plan has become out of date. At the inquiry, the Council's witness agreed that the SHMA represents the best and most up-to-date evidence of OAN currently available, and I see no reason to disagree with that view.
38. For these reasons, I conclude that the 2014 South Hampshire SHMA appears to represent a respectable and credible picture of the OAN for housing in Fareham. As such, it seems more likely to present a realistic picture of housing need than the FCS. Of these two options therefore, it seems to me that the SHMA provides the more suitable basis for a 5-year land supply calculation at the present time.

*The OAN figure*

39. Although the SHMA covers a wide range of alternative scenarios, there is agreement between the Council and the appellants that, if the SHMA-based approach is used, then the most appropriate set of figures for the purposes of this appeal is that referred to as 'PROJ2 - Midpoint Headship'<sup>5</sup>. This is

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<sup>5</sup> As set out in the SHMA report at Appendix U, Table 19 (on p51 of the Appendices)

essentially a demographic-based projection of housing need linked to the ONS sub-national population figures, with an adjustment for future changes in migration, and incorporating a household formation rate mid-way between those of the 2008-based and 2011-based DCLG projections. On this basis, Fareham's OAN, over the period 2011-36, would be 395 dwellings per annum.

40. Despite this measure of agreement, some of the evidence presented at the inquiry still questions whether 395 p.a. is high enough, having regard to the level of need in the affordable housing sector, and the need to avoid restricting economic growth. Even the Council's own witness admitted that economic trends were more likely to push the OAN up from that figure rather than down, and that on any basis, the full OAN was unlikely to be less than 395 p.a. However, it is not the function of this appeal to attempt to determine the future level of housing required in Fareham. The reason for exploring these matters is simply to choose the most appropriate figure for testing the 5-year supply at this point in time. None of the evidence identifies any other specific figure within the SHMA as being preferable to 395 dwellings per annum.
41. In passing, I note the Council's point that just because 395 p.a. is the average across the whole of the SHMA's 25-year period, that does not necessarily mean that the annual rate should be constant throughout. This may be so, but again, there is no specific evidence to support any alternative phasing. In the light of all the evidence before me, I conclude that 395 dwellings p.a. is a reasonably robust basis on which to proceed.
42. On this basis therefore, 5 years' worth of the annual OAN would be 1,975 dwellings. With the addition of a 5% buffer, which is not disputed, the overall 5-year requirement becomes 2,074 units<sup>6</sup>.

*The Council's suggested adjustment for over-delivery in previous years*

43. This requirement of 2,074 exceeds the Council's claimed supply of 1,926 dwellings<sup>7</sup>. However, the Council argues that the requirement should be reduced because, during the period 2006-14, housing completions exceeded the requirement in Policy CS2 by 401 units.
44. In putting forward this argument, the Council relies on paragraph 3-036 of the PPG, which states:
- "In assessing need, consideration may be given to evidence that a Council has delivered over and above its housing needs". (3-036)*
- In the light of this advice, the Council's case is essentially that this means that the past 'overprovision' should be deducted from the requirement for the next 5-year period, in full, irrespective of whether that requirement figure is based on the FCS or the SHMA.
45. I have considered this argument carefully. However, the PPG advice relates specifically to a situation where housing delivery has exceeded the area's housing needs, rather than a policy requirement. In this case, for the reasons explained above, I have come to the view that the Borough's housing needs are now more accurately expressed in the SHMA projections than in the FCS.

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<sup>6</sup> In the parties' evidence this is shown as 2,075, due to rounding the buffer from 19.75 to 20 units for each individual year

<sup>7</sup> As amended by Mr Home in oral evidence, from the figure of 1,876 which appears in the statement of common ground

Measured against the SHMA figure of 395 units per annum, there has been no over-provision or over-delivery.

46. I appreciate that the SHMA was only published in January 2014. But it relates to a period that started from April 2011, and it is therefore logical to take account of the housing needs that have arisen over the whole of that period. I fully accept that during 2011-14, the Council could not have been expected to meet a need which it was not aware of at the time, but that is not the point here<sup>8</sup>. With the benefit of the information now available, what was previously seen as an over-delivery against the FCS requirement during those three years, can now be seen to have been in reality a slight under-delivery compared to the level of actual need.
47. For the years 2006-11, there is no assessment of OAN. Housing completions in that period exceeded the relevant policy requirement in the FCS, but that does not mean that they exceeded the need. And in any event, this period prior to 2011 is now somewhat historic. I appreciate that 2006 was the start of the FCS period, but now that the FCS is no longer the best reference point for future housing needs, it becomes questionable whether housing completions from before 2011 have any continuing relevance.
48. Furthermore, even if I were to take a different view on these matters, so that the 401 dwellings over-delivery against the FCS were to be deducted from the SHMA-based requirement as suggested, it is far from clear why the whole of the 401 should be offset against the needs of just the next 5 years. I appreciate that this would mirror the 'Sedgefield method', but that approach is normally used where the past performance has been one of under-provision, and in that kind of situation there is consequently a clear imperative to achieve a rapid increase in the rate of delivery. In the reverse situation, as here, there is no such imperative. Arguably, the effect would be a sharp reduction, which would be at odds with the NPPF's aims to maintain continuity of supply and boost overall provision. The Council has presented no cogent rationale for this approach.
49. The PPG advice referred to above allows for consideration of the effects of past over-delivery, but does not specify what action should then be taken. It may be that in some circumstances an adjustment to the requirement for future years would be justified, but here, for the reasons that I have explained, that is not the case. I can see nothing in the PPG which sanctions the approach now proposed by the Council in deducting 401 units from the requirement side of the 5-year supply calculation.
50. I therefore conclude that no adjustment should be made in respect of the past over-delivery against the FCS requirement.

*The supply side: Welborne*

51. The Council anticipates 500 completions, within the 5-year period, at the proposed new settlement of Welborne. This is supported by the planning and development programme agreed with the scheme's promoters and other relevant agencies, which indicates work starting on site in March 2016, and the first 120 dwellings being completed by March 2017. The Council acknowledges

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<sup>8</sup> As noted at the inquiry, this argument might be relevant in other circumstances, such as where the point at issue relates to whether there has been 'persistent under-delivery' for the purposes of the NPPF buffer; but the issue here is distinct from that type of assessment

that this programme is both challenging and ambitious, but regards it as achievable.

52. However, the planned scheme is for a very large development, amounting to some 6,500 dwellings overall, plus employment, retail and other land uses. In terms of the practicalities of development, the site is completely undeveloped land, and major new infrastructure works of all kinds will be needed. A connection to the M27 is required, involving a new junction and slip roads. Developer partners, to take the lead in house-building and infrastructure works, have not yet been identified. Some of the land is not yet within the control of the current promoters, and the possible need to use compulsory purchase powers has not been ruled out. Although the Council maintains that the scheme will be financially viable, it admits that viability has been identified as a significant issue, and remains under review.
53. In terms of its planning status, although the general location of the development has been identified for many years, the formal allocation and specific site boundaries remain to be confirmed in the Welborne Plan, which is still under examination. No planning permission exists, nor has an application been made. Any application is likely to be subject to an environmental assessment, for which some of the necessary survey work will be limited as to the time of year. Some parts of the site apparently have protected status under European legislation, and a mitigation strategy may need to be agreed with Natural England before an application can be considered. There is no clear evidence as to how much of this work has already been done. I have no reason to doubt that ultimately the hurdles can be overcome, but that does not mean that they can be overcome quickly.
54. I note the Council's suggestion that, if necessary, a first phase of 500 dwellings could be brought forward as a stand-alone scheme, in advance of the new motorway junction and other new facilities. But there is no proper evidence regarding the feasibility of this option, or its effects on the development programme. The Welborne Plan clearly seeks a comprehensive approach, as set out in draft Policy WEL4.
55. The NPPF's test for inclusion in the 5-year supply includes the requirement that sites should have a realistic prospect of delivering houses within that timescale. At the inquiry the appellants' witness accepted that there was a possibility of up to 50 units coming forward within the 5-year period, although no more than that. I do not disagree with that assessment. But a mere possibility is not the same as a realistic prospect.
56. There can be no doubting the amount of work that has already gone into the Welborne scheme, or the commitment of all the parties involved. However, it is equally clear that there is still a long way to go before any houses can start to be built. For a development of this scale, with no planning permission or current application, nor yet even a detailed site allocation, five years is not a long time. From the evidence presented, it seems to me that the Council's development programme for Welborne relies at each stage on the absolute minimum timescales, or less. That approach may have its merits in some other context, but for the purposes of assessing the 5-year supply, it lacks flexibility. For this purpose, it would be more realistic in my view to assume that the development is likely to come forward in a slightly longer timescale, pushing the first completions beyond the 5-year period.

57. I conclude that the Council has failed to show a realistic prospect that development at Welborne is likely to contribute to the 5-year supply. The site therefore cannot be regarded as deliverable at this stage, in terms of the NPPF requirement. This reduces the Council's claimed supply by 500, to a maximum of 1,426 units.

*The supply side: other disputed matters*

58. A number of other sites in the Council's supply, totalling 202 units, are disputed by the appellants. I appreciate that some of these do not yet have planning permission. However, the information that the Council has provided indicates that the sites are likely to come forward within the requisite period. Some are proposed allocations in the draft DSP, which remain to be considered, but I am not aware of any objections to the principle of development on any of these sites. Some of the sites have other issues to be addressed, relating to access, trees and other detailed matters, but there is no suggestion that these are likely to be insoluble. None are so large that they would require more than five years to complete. In all of these cases, there is sufficient evidence to justify treating these sites as deliverable.

59. The Council's supply figures also include a windfall allowance of 100 dwellings across the 5-year period. I accept that this may involve a risk of some overlap with sites that are counted in other categories. But on the other hand, the Council's supply does not count identified sites of less than five units, including those with permission, which total 139 units. The Council suggests that, for the purposes of this appeal, these two figures are close enough to offset each other. In the interests of avoiding unnecessary complexity, I agree.

60. I therefore make no further adjustment to the Council's supply figure in response to the disputed sites or the windfall allowance. But in any event, in the light of the conclusions that I have already reached above, these matters do not affect the final outcome of the land supply calculation.

*Conclusions on housing land supply*

61. From the above, I conclude that the 5-year requirement, based on the best evidence of the OAN, should be 2,074 dwellings. This requirement should not be adjusted to take account of over-delivery prior to April 2014. Against this, the Council's maximum claimed supply is only 1,926 dwellings. The supply must therefore be less than the minimum 5 years required by the NPPF.

62. In addition, the Council's figure over-states the supply, by including 500 units at Welborne, which should not yet be counted as deliverable within the relevant 5-year period. When these are deducted, the realistically deliverable supply becomes 1,426 units. This amounts to only around 3.4 years.

63. Although the DSP and WP are at the examination stage, there is no evidence to suggest that the adoption of those plans in the near future would significantly change the housing supply situation from that considered at this inquiry. All in all, I conclude that a 5-year supply has not been demonstrated.

64. In the light of this finding, NPPF paragraph 49 requires that any relevant policies for the supply of housing be treated as out-of-date. For the purposes of the present appeal, it is not disputed that these include Policy CS14, in so far as the latter provides for settlement boundaries, and seeks to restrict housing development anywhere outside them. Accordingly, although the appeal site is

outside the boundary of Lower Swanwick, the resulting in-principle conflict with Policy CS14 carries relatively little weight.

65. In addition, the lack of a 5-year supply also means that added weight should be given to the benefits of providing housing to meet local needs.

### **Effects on the area's character and appearance**

#### *Effects on the character and appearance of the countryside*

66. In policy terms, the countryside is defined by the FBLP proposals map. On that map, the settlement of Lower Swanwick appears separated from the River Hamble by a continuous swathe of countryside, coloured green, and the appeal site is included in that area. Based on the proposals map, the loss of the appeal site would bring the urban area closer to the river, reducing the remaining countryside at that point to little more than a narrow strip along the water's edge. However, that is an impression conveyed by a map produced for a particular purpose. As its name suggests, the proposals map is concerned with policies and the control of development in the future; it is not necessarily intended to depict what exists now, nor can it be definitive in that respect. And in any event, for the reasons explained earlier, the settlement boundaries currently carry reduced weight, due to the lack of a demonstrated housing supply. For the purposes of this appeal therefore, it seems to me that any assessment of the appeal site's contribution to the countryside cannot usefully be done simply by reference to the FBLP proposals map. Rather, such an assessment should be based on what is seen on the ground.
67. The appeal site comprises an undeveloped grass paddock, currently used for grazing horses. To that extent, it might be arguable that the site has some resemblance to open countryside. However, the site lies at the junction of Lower Swanwick's two main roads, Bridge Road (the A27) and Swanwick Lane, which is effectively the settlement's centre. On its south-eastern and north-eastern sides, the site abuts existing residential areas. Adjacent to Swanwick Lane there is also a children's play area. To the south-west and north-west, fronting the river, is an extensive area of boat yards, workshops, moorings and related development, plus The Navigator pub and its car park. The appeal site is thus surrounded on all sides by urban land uses and built development, and at no point does it abut or connect with any other undeveloped or un-urbanised land. Consequently, notwithstanding its designation as countryside, what is seen on the ground amounts to no more than a relatively small, self-contained patch of vacant land, wholly enveloped within the built-up area.
68. How the site looks in reality is therefore quite different from the impression gained from the proposals map. To a large extent, this difference is explained by the treatment of the boatyards which encircle the appeal site on two sides. On the proposals map these are included in the countryside, thus creating the apparent connection between the appeal site and the river, and thence to the more open countryside beyond. I take no issue with this approach in terms of the policies that this implies for the yards themselves. But in terms of their effect on how the appeal site is perceived, the reality is that the boatyards comprise mainly large-scale, industrial-style buildings and a large expanse of hardstanding. Visually, these appear as an integral part of Lower Swanwick's built-up area. As such, their effect is not to link the appeal site to the river and

countryside, but rather to separate it from those, and to enclose it within the settlement.

69. In addition, the Swanwick Marina site, which includes the greater part of this boatyard area, has planning permission for redevelopment, including a pavilion building of up to 3 storeys, with retail units, bar and restaurant facilities, plus new workshops and offices, and 49 dwellings. The effect of that scheme, it seems to me, can only be to reinforce the urban character of the marina/boatyards area, further consolidating the settlement pattern and the appeal site's sense of containment within the urban area.
70. Similarly, to the north of the appeal site, the settlement boundary excludes some of the residential properties at Green Lane, suggesting a connection between the appeal site and the countryside beyond. However, as I saw on my visit, Green Lane is entirely residential in character, and functionally is fully part of the settlement of Lower Swanwick. Whilst the excluded properties are relatively low-density, a number such as 'Highfield' and 'Genesta' have been extended or replaced, becoming more prominent as a result. Consequently the Green Lane residential area is a highly visible part of the backdrop to the appeal site. Again, I do not mean to question the settlement boundary itself, as far as it relates to the Green Lane area, or the policies to be applied there. But in relation to the appeal site, the presence of residential development along the full length of its north-eastern boundary contributes to the impression of a site encircled by existing development, and reinforces the site's visual containment within the settlement.
71. This impression of containment is increased yet further by the dense woodland belt that runs along the appeal site's north-western boundary, partly within the site itself and partly on adjoining land. Some of the trees in this belt result from the additional planting that was carried out a few years ago. I note the comments made at the inquiry as to the possible motive for that planting, but this has no relevance to the planning merits of the site or the proposed development. To my mind, the tree belt has an attractive, naturalistic appearance, and continues the line which is already established along the top of the river bank further to the north. Its effect is to further reinforce the site's separation from the river, and its association with the built-up area.
72. I note the contents of the 1996 Landscape Character Assessment (LCA)<sup>9</sup>. That report found that the appeal site had 'strong visual links with the river and boat-related activities on the south side of the road'. That may have been so then, and indeed might still be so. But the boat-related activities referred to must presumably have been those in and around the boatyards, and for the reasons already given, my view is that that area has more affinity with the built-up area than the countryside. In any event, I can see nothing in this comment that could be said to endorse the view that the appeal site formed part of the countryside, either then or now. Neither is there any support for that view in the 2012 LCA<sup>10</sup>; indeed that report includes the appeal site in the urban area.
73. There are mid-range and longer views of the site from the A27 river bridge, and the railway bridge, and from Lands End Road on the opposite bank. But from all of these viewpoints, the site is framed by buildings and urban land

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<sup>9</sup> Fareham Borough Landscape Assessment : Scott Wilson Resource Consultants, May 1996

<sup>10</sup> The Hamble Valley Integrated Character Assessment : Hampshire County Council, May 2012

uses on all sides. Indeed, in respect of the view from Lands End Road, the Council made the point more than once at the inquiry, that the appeal site is the only piece of green space or open land that is visible. In addition, in all of these views, the site is partially screened by the tree belt or boatyard buildings. In none of them is the appeal site a main focus or a key element of the view. No other significant public viewpoints have been identified, other than from the roads immediately adjacent to the site itself. In my opinion all of these available viewpoints merely serve to reaffirm my earlier judgement, that the site's setting and context is formed primarily by the built-up area of Lower Swanwick.

74. In these circumstances, I conclude that the appeal site, in its undeveloped state, contributes nothing of any significance to the character or appearance of the countryside. It follows from this that, whatever visual impact the development might have, that impact would not be likely to significantly affect the countryside.

*Effects on the character and appearance of Lower Swanwick - loss of openness*

75. Seen from within Lower Swanwick, the appeal site appears essentially as an open, grassed field, sloping towards the A27. There is an attractive, medium-sized native poplar tree in one corner, at the Swanwick Lane junction, and the woodland belt on the opposite boundary, but there is no suggestion that the proposed development would put these at risk. In all other respects, the site is featureless and unremarkable.
76. If the site were developed as proposed, its present openness would be lost. However, as far as I am aware, the site has never been formally identified as an important open space, or any similar designation based on its townscape value or any contribution to the character or appearance of the settlement. Bearing in mind the other planning considerations discussed above, and especially the urban nature of the location, and the unmet need for housing, in these circumstances the loss of openness on its own is not a compelling objection.
77. Development on the lower part of the site could potentially obstruct views towards the waterfront from Swanwick Lane and the play area. Although the river itself is not visible from here, its presence is signalled by the sight of the many boat masts which extend above the roofs of the boatyard buildings, and I can appreciate why that sight would be missed by residents. But that consideration alone is not overriding. The site is not in a conservation area, nor would the proposed development appear to affect any views into or out of any such areas. The view from Swanwick Lane was not identified as a consideration in the design officer's pre-application comments, or in the planning officer's report, nor in the refusal reasons. Nor was it identified in either of the relevant LCAs. There is also no evidence that this was seen as an issue in the Council's earlier decision on the Swanwick Marina scheme, which seems likely to have a greater impact on the same view. Consequently, I am not convinced that the view from Swanwick Lane is such an important planning consideration as to outweigh the other matters that I have identified.
78. And in any event, the existing views need not be lost altogether, because layout and design are reserved matters. If the Council regards the views from Swanwick Lane as a priority issue, there seems no reason why the height and disposition of the buildings could not be designed to take this into account, by

creating gaps and preserving lines of sight where necessary. The current illustrative layout does not do this, but that plan is not binding, either on the Council or a future developer. Development on the remainder of the site would have little or no impact in terms of views towards the river. Given the size of the site as a whole, and the lack of constraints in most other respects, I see no reason why an acceptable alternative scheme could not be designed which takes account of the relevant viewpoints from within Lower Swanwick.

79. I also note the other points made in support of the retention of some openness at the site's southern corner, to create a landscaped area around the road junction and the poplar tree. I agree that this could well be an attractive approach, and this might be one possible way of producing the urban design focus that the 1996 LCA saw a need for here. But there is no reason why this should be the only way. In any event, for the same reasons as above, an outline permission based on the present application would not prevent this or any other approach from being followed at the reserved matters stage.
80. And furthermore, looking at the site as a whole, it seems to me that at that stage there would be the opportunity to seek to secure a high-quality scheme which could make better use of the land than at present, and which could enhance the urban townscape at this potentially important focal point. In the present outline application there is no guarantee that this opportunity would be realised, but the outcome would be at least partly in the Council's hands.
81. For these reasons, I have come to the view that the loss of the appeal site in its undeveloped state would not have any unacceptable adverse impact on the character or appearance of Lower Swanwick, and indeed could prove beneficial.

*Effects on Lower Swanwick – the quantity of development proposed*

82. Averaged across the site, the proposed development of 37 dwellings would amount to a density of about 32 dwellings per hectare (dph). That is slightly higher than the average within the surrounding residential area, but not unduly so. Nothing in the NPPF or PPG suggests that new development should be required to match that of its surroundings as a matter of course. Rather, the emphasis is on making good use of land, encouraging innovation, and good design, whilst still respecting local character and identity.
83. If development on the lower part of the site were restricted for any of the reasons discussed above, that would tend to increase the density of the remainder of the site, to above 32 dph. At the extreme, if all of the built development were concentrated in the upper area, the density there would be around 47 dph. But that would be offset by a lower density in the lower area; it would not change the overall density of the development as a whole. The existing settlement itself contains a wide range of variation in densities, both above and below what is now proposed; including lower density at Green Lane, but higher in the Swanwick Lane terraces, the Swanwick Quay flats, and the proposed Marina development. There is nothing inherently objectionable about such differences.
84. I accept that the submitted illustrative plan has some shortcomings. I agree that it would be desirable for the development to present an active frontage to the public realm, including Swanwick Lane and the play area, and that issues such as overlooking and relationships to surrounding properties need careful

attention. But all of these are reserved matters, and there is nothing to suggest that they cannot be resolved at the appropriate stage.

85. I note that there is now no dispute that the north-western tree belt could be satisfactorily protected by the relevant provisions contained in the undertaking, together with a buffer zone which could be secured by condition.
86. Having regard for all the evidence before me, I can see no reason why an outline permission for 37 units should not be able to produce a satisfactory detailed scheme which satisfies national and local design policies.

*Other matters relating to effects on character and appearance*

87. Although the appeal site was included in the coastal zone that was identified in the FBLP, that policy has now ceased to have any effect. I note the suggestion that the 'coastline' and 'coastal locations' now referred to in Policy CS14 must be the same as that area, but this does not follow. The areas in question are not defined on any map. Whilst Lower Swanwick might be described as being just within the upper reaches of the river estuary, it is some way from what would normally be considered the coastline. In my view, the area is clearly not the kind of 'undeveloped coast' to which paragraph 114 of the NPPF refers. In any event, for the same reasons as those given above, I do not consider that the development would have any significant adverse effect on the character or appearance of the coastal area, or that of the Hamble estuary.
88. As I have already indicated, I appreciate that the site is valued by local people. However, the NPPF advice on protecting 'valued landscapes', in paragraph 109, is placed in the context of conserving and enhancing the natural environment. In the present case, in view of my conclusions on the above matters, it seems to me that the appeal site does not contribute significantly to the natural environment in any of the ways to which this paragraph is directed. I can therefore find no reasonable basis for applying paragraph 109 here.

*Conclusions regarding the effects on character and appearance*

89. I conclude that the proposed development would have no material adverse effects on the character or appearance of the countryside, or of the settlement of Lower Swanwick. As such, it would not conflict with any of the relevant policies, including FLBP Policy DG4, or FCS Policies CS9, CS14 or CS17.

**Other matters**

*Traffic and safety*

90. I note the concerns raised by local residents, particularly concerning traffic, congestion and highway safety. I saw on my visit that local roads are already busy, especially in the peak periods, and the development now proposed would add more traffic to the network. However, as a percentage of the existing flows, the increase generated by 37 dwellings would be negligible, and the proposed design of the new junction on Swanwick Lane, including the proposed 'keep clear' road markings, would meet all of the Highway Authority's safety requirements. There are therefore no reasonable highway grounds for objection.
91. In addition, the replacement of the existing layby with a new off-street car park would undoubtedly be a safer arrangement for users of the children's play area,

as it would greatly reduce the potential for a small child to wander into the path of a moving vehicle. I appreciate that this might leave some residents looking for alternative overnight parking, but it seems to me that this is outweighed by the safety benefit.

92. A suitable junction design and the early provision of the car park can be secured by conditions.

*Residential amenity*

93. I accept that the proposed development would block views of the river from some neighbouring properties, and I fully understand what this would mean to their owners. However, the loss of private views weighs less heavily as a planning consideration than the other issues that have been identified. There is no reason to doubt that existing occupiers can be adequately protected from more serious impacts such as overlooking, overshadowing or overbearing effects, at the detailed stage. The development therefore need not unacceptably harm living conditions at any existing property.

*Local facilities*

94. I note the comments made about the adequacy of some local facilities. But on my tour of the area, I saw that the site is within reasonably easy reach of schools, doctors, shops and a variety of local employment. Public transport is available by bus and train, at most times of day, and the Highway Authority states that it intends to improve pedestrian and cycle facilities on the A27.
95. I accept that there may be pressures on some local services, especially doctors and schools, but at a time when population numbers are increasing throughout the region, the same is true in many areas, and ultimately the task of adapting to meet future needs is one for the providers of those services. In the present case, this would not be a proper reason to refuse planning permission.

*Wildlife*

96. The various observations relating to wildlife are noted, but the survey evidence shows that the site has limited habitat value. This can be adequately protected and enhanced by condition.

*The legal undertaking*

97. The undertaking provides for a financial contribution of £6,364.00 towards the mitigation of off-site ecological impacts. The need for such a contribution arises because of the development's proximity to designated sites of ecological importance, and the consequent potential cumulative impacts of developments in the area on protected bird species. A framework for such contributions has been agreed between the PUSH authorities under the Solent Disturbance and Mitigation Project, and a specific programme of mitigation works has been identified, focused on the Alver Valley Country Park, in the Borough of Gosport.
98. The undertaking also provides for the setting up of a management company to maintain the development, and for the carrying out of a woodland management plan and other landscaping works, in accordance with details to be approved by the Council.

99. From the information provided, I am satisfied that all of the obligations are necessary, and are properly related to the proposed development, so as to meet the relevant policy and legal tests<sup>11</sup>.
100. I note that a Community Infrastructure Levy (CIL) charging Schedule is in place in the borough, and that the proposed development would also be required to contribute to local infrastructure provision through a CIL payment.

### **Conditions**

101. I have considered the conditions suggested by the Council, and those others discussed at the inquiry, in the light of the tests in NPPF paragraph 206. If permission is granted, I agree that most of these conditions would be needed in one form or another, although with some re-ordering and rewording, to improve their clarity, precision and effectiveness. The conditions that I consider should be imposed on any permission in this case are set out in the attached Schedule.

#### *Conditions to be imposed*

102. Conditions Nos 1 – 3 set out the requirements as to reserved matters and the time limits for submission and commencement. In the light of my earlier conclusions regarding the Borough's housing land supply, I have reduced the time limits to less than the normal statutory periods, to better reflect the urgency of the need. I note the Council's suggested additional wording, but I see no evidence to support a limit of 3 storeys; nor any need for these conditions to refer to the mix of dwelling types.
103. Condition 4 sets out the requirements with regard to affordable housing, which is needed to comply with FCS Policy CS18. I agree that the condition should specify the number of affordable units, and their tenures, but the suggested detailed breakdown as to numbers of bedrooms and floorspaces seems to me over-prescriptive at this outline stage. The suggested contingency provisions relating to right-to-buy, staircasing, mortgagee in possession, and other exceptions, seem to me too imprecise for inclusion in a condition, and I have therefore omitted these.
104. Conditions 5 and 6 set out the requirements for pre-commencement investigations relating to archaeology and contamination. These are necessary to protect the historic environment and the health of future occupiers respectively.
105. Conditions 7 and 8 are aimed at securing the implementation and on-going management of high-quality landscaping, and Nos 9 – 13 provide for the protection of existing trees and hedges. All of these are needed to ensure a good standard of development.
106. Conditions 14 – 20 set out the requirements as to highway works, both off and on-site, and Nos 21 and 22 secure the provision of the proposed play area car park. All of these are necessary in the interests of highway safety and for the convenience of road users. In Condition 22, I have increased the period from 6 to 8 weeks, to ensure that compliance can be achieved.

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<sup>11</sup> In: (i) Regulation 122 of the Community Infrastructure Levy Regulations 2010; and (ii) NPPF paragraph 204

107. Condition 23 requires adequate measures to mitigate noise from road traffic and nearby commercial uses, as defined in the submitted noise report; and Condition 24 seeks the provision of suitable facilities for household refuse. Both are needed to ensure a satisfactory residential environment.
108. Condition 25 calls for ecological mitigation and enhancement, in order to minimise any impacts on biodiversity and secure a net gain in accordance with NPPF paragraph 109. The condition requires further details to be submitted and approved, since the existing ecological report contains limited detail as to any recommended measures.
109. Condition 26 requires compliance with the Code for Sustainable Homes, in accordance with FCS Policy CS15.

#### *Rejected conditions*

110. Having carefully considered all of the other suggested conditions, I find that none of these meet the relevant tests. The Council's proposed requirement for the development to be carried out only in accordance with the submitted illustrative plan would not be reasonable, because layout is a reserved matter, and in any event there is no evidence to suggest that no other form of layout would be acceptable. Equally, the appellants' tentative suggestion of an exclusion area in the southern corner would not be a reasonable condition, since it has not been shown that there is any overriding objection to development in that part of the site.
111. The proposed conditions relating to materials, car parking and cycle storage are unnecessary, as these details can be dealt with at the reserved matters stage. Lighting is adequately covered in the revised on-site highway works condition that I have included at Condition 20, and thus does not need an additional separate condition.
112. With regard to the proposed construction method statement and controls on the hours of construction work, powers are available to prevent obstruction of the public highway, or the deposit of mud, and to prevent nuisance to adjoining occupiers, under other legislation. There are no particular circumstances here that make it necessary to duplicate those controls through planning conditions.

#### **CONCLUSIONS**

113. The proposed development of 37 dwellings would be outside the settlement boundary defined in the FBLP, and would thus conflict with FCS Policy CS14. However, given the lack of a demonstrated 5-year housing supply, the settlement boundary must be regarded as out of date, and the weight that can be afforded to Policy CS14 is reduced accordingly.
114. Despite its designation on the FBLP proposals map, the appeal site does not appear in reality as an integral part of the countryside, nor of the coast, and does not contribute significantly to the character or appearance of those areas. Neither does the site, in its undeveloped state, contribute positively to the character or setting of the settlement. Consequently, no material conflicts arise in respect of any of the policies that are concerned with protecting these areas, in either the development plan or the NPPF.

115. The site lies within the Western Wards area, which is identified in Policies CS6 and CS9 as one of the District's preferred locations for housing development. The local infrastructure and services are adequate to serve a development on the scale now proposed.
116. So, on the one hand, the development would result in the loss of an undeveloped, but otherwise unremarkable, parcel of open land. On the other hand, the proposed development would make a valuable contribution to meeting local housing needs, including affordable housing provision. There would also be a modest public benefit in the provision of the proposed car park to serve the existing play area. And in addition there would be the opportunity, at the reserved matters stage, for the Council to seek to secure a high-quality scheme, which could make better use of the land, and enhance the townscape.
117. In view of the unmet housing need, the benefit of adding 37 new dwellings to the local housing supply commands substantial weight. Together with the car park and the potential for townscape enhancement, it seems to me that the conflict with Policy CS14 and any other harm arising from the development would be significantly and demonstrably outweighed by these benefits.
118. Having regard to the three 'dimensions' of sustainable development, and all of the relevant policies contained in the NPPF, I conclude that the development now proposed would constitute the kind of sustainable development that the NPPF seeks to encourage and promote. I have taken into account all the other matters raised, but none alters this conclusion.
119. The appeal is therefore allowed.

*John Felgate*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

The planning permission to which this decision relates is granted subject to the following conditions (numbered 1 - 26):

### *Reserved matters and time limits*

- 1) No development shall be commenced until details of the appearance, landscaping, layout, and scale (hereinafter called "the *reserved matters*") of the proposed development have been submitted to the local planning authority and approved in writing. The development shall be carried out in accordance with the details thus approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
- 3) The development shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.

### *Affordable housing*

- 4) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to the local planning authority and approved in writing. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the NPPF. The scheme shall provide for 15 units of affordable housing, including 10 for 'affordable rented' tenure, and 5 for shared ownership. The affordable housing scheme shall also contain details of:
  - (i) the proposed mix of types and sizes of the affordable housing units, and their location within the site;
  - (ii) the proposed timing of the construction of the affordable units, in relation to the occupancy of the market housing;
  - (iii) the proposed arrangements for the transfer of the affordable housing to an affordable housing provider;
  - (iv) the arrangements to ensure affordability for the initial and subsequent occupiers in perpetuity; and
  - (v) the occupancy criteria and the means by which such criteria are to be enforced.

### *Archaeology*

- 5) No development shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme of investigation which has been submitted to the local planning authority and approved in writing.

### *Contamination*

- 6) No development shall take place until the site has been investigated for soil contamination, and any such contamination found to be present has been removed or rendered harmless, in accordance with a scheme to be submitted to the local planning authority and approved in writing. In addition:
  - (i) If, during the course of construction, any contamination is found which has not been identified previously, no further work shall take place until that contamination has been removed or rendered harmless, in accordance with additional measures to be submitted to and approved in writing by the local planning authority; and
  - (ii) If any contamination has been found to be present at any stage, either before or during construction, no part of the proposed development shall be brought into use until a verification report has been submitted to and approved by the local planning authority, showing that all such contamination has been treated, and the site

rendered safe for occupation, in accordance with the original contamination scheme and any further measures subsequently agreed.

*Landscaping*

- 7) The landscaping details to be approved under Condition 1 shall include details of all planting and seeding, the surfacing of all hard surfaced areas, all boundary treatments, all re-grading or re-contouring of the land, and any signage and street furniture. The landscaping works thus approved shall be implemented in accordance with the approved details, and in accordance with the timescale specified in the submitted legal undertaking.
- 8) The landscaping details to be approved under Condition 1 shall also include a landscape management plan. Following the implementation of the landscaping works, all of the landscaped areas shall be maintained thereafter in accordance with the details thus approved. Any tree or plant forming part of the approved landscaping scheme which dies, or becomes seriously damaged or diseased, or is removed for any reason, within a period of 5 years after planting, shall be replaced during the next planting season with others of similar size and species.

*Existing trees and hedgerows*

- 9) No development shall take place until a tree and hedgerow protection scheme has been submitted to the local planning authority and approved in writing. The scheme shall contain details of proposed measures for the protection and retention of all of the existing trees and hedgerows on and adjacent to the site during construction. The scheme shall also identify a suitably qualified Arboricultural Supervisor.
- 10) The measures to be approved under Condition 9 shall include protective fencing, and such fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought on to the site, and shall remain in place until the latter have been removed from the site and the development has been completed. Nothing shall be stored or placed in any area fenced in accordance with this condition, and the ground levels within these areas shall not be altered, nor shall any excavation be made, except with the written consent of the local planning authority.
- 11) No tree or hedgerow on the site shall at any time be cut down, uprooted or destroyed, nor be topped, lopped or pruned, other than in accordance with details approved within either the tree and hedgerow protection scheme (under Condition 9) or the landscape management plan (under Condition 8). Notwithstanding this requirement, in the event that any existing tree or hedgerow dies or is lost for any reason, within a period of 5 years from the date of completion of the development, replacement planting shall be carried out in accordance with details to be approved in writing by the local planning authority.
- 12) All works approved under Conditions 9 - 11 shall be carried out in accordance with BS 5837:2012, and shall be overseen by the approved Arboricultural Supervisor.
- 13) The layout details to be submitted under Condition 1 shall include provision for a 5m-wide woodland buffer zone alongside the whole length of the tree belt on the site's north-western boundary, as shown on Plan No PP1220-101-00 (Revision. P2). Within this buffer zone, the land shall be used only for communal purposes, including landscaping, open space, and roadways, and no part of the buffer zone shall be included within the curtilage of any dwelling.

*Access and off-site highway works*

- 14) The proposed new access to the site and related off-site highway works shall be laid out in accordance with the submitted details shown on Plan No. A083488\_PR\_01. These works shall include the removal of the existing layby in Swanwick Lane, the

realignment of the footway alongside it, and the provision of visibility splays of 2.4m x 65m in both directions, all as shown on this approved plan.

- 15) In addition, the following off-site works are to be carried out, in accordance with details to be submitted to the local planning authority and approved in writing:
  - (i) the making good of the redundant footway and layby areas; and
  - (ii) the permanent closure of the existing site access to the north of the play area.
- 16) No development (other than that required to comply with this condition) shall be carried out until the existing layby has been closed, and the site access has been constructed to at least binder course level, including the first 10m of the access road.
- 17) No development or works of any kind (including those specified in condition 16), shall be carried out until a timetable for the full completion of all the access and off-site highway works required under Conditions 14 - 16 has been submitted to the local planning authority and approved in writing. These works shall thereafter be carried out and completed in accordance with the timetable thus approved.
- 18) No new dwelling shall be occupied until 'keep clear' road markings have been provided in Swanwick Lane, in accordance with details to be submitted to the local planning authority and approved in writing.
- 19) Once the visibility splays referred to in Condition 14 have been created, clear visibility within the splay areas shall be maintained thereafter, above a height of 600mm from ground level.

*On-site highway works*

- 20) The details to be submitted under Condition 1 above shall include details of all necessary on-site highway infrastructure, including access roads, turning areas, footways, street lighting and highway drainage, together with a timetable for the implementation of these on-site works. No dwelling shall be occupied until the on-site highway infrastructure serving that unit has been provided, in accordance with the approved details, and the relevant roads and footways finished to at least binder course level. These on-site highway works shall thereafter be fully completed in accordance with the approved timetable.

*Play area car park*

- 21) The layout details to be submitted under Condition 1.1 above shall include details of the proposed new car park for the existing play area adjacent to the site. The car park shall provide a minimum of 6 spaces, and shall be laid out in accordance with the details thus approved.
- 22) The proposed car park to be provided under Condition 21 shall be completed and made available for public use in connection with the play area, no later than 8 weeks from the date when the existing layby is closed. Thereafter, the car park shall be retained and kept available for its stated use.

*Noise mitigation*

- 23) No construction work on any new dwelling shall be commenced until a scheme of noise mitigation, including details of the proposed glazing and ventilation systems, has been submitted to the local planning authority and approved in writing. The submitted details shall demonstrate that the new dwellings are designed not to exceed the following maximum internal noise levels:

Daytime average (all habitable rooms):	35 dB $L_{Aeq}$
Night-time average (bedrooms):	30 dB $L_{Aeq}$
Night-time maximum (bedrooms):	45 dB $L_{Amax}$

*Refuse storage*

- 24) The details to be submitted for approval under Condition 1 shall include details of the provision to be made for the storage of household refuse for each proposed dwelling. No dwelling shall be occupied until the approved provision has been made available for use by the occupiers of that dwelling. Thereafter, the approved refuse storage provisions shall be retained in accordance with the details thus approved.

*Ecological mitigation*

- 25) No development shall take place until a detailed scheme of ecological mitigation and enhancement measures has been submitted to the local planning authority and approved in writing. The scheme shall include a timetable for the implementation of the necessary works, and those works shall be carried out in accordance with the scheme and timetable thus approved.

*Code for Sustainable Homes*

- 26) The proposed dwellings shall achieve Level 4 of the Code for Sustainable Homes. No new dwelling shall be occupied until a final Code Certificate has been issued for that dwelling, certifying that Code Level 4 has been achieved.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Ground, of Counsel      Instructed by the Solicitor to the Council

He called:

Mr Stephen Jupp, BA(Hons) LLM MRTPI	Planning consultant
Mr Peter Home, MA(Oxf) MRTPI	Adams Hendry

### FOR THE APPELLANT:

Mr Christopher Boyle, QC      Instructed by WYG Planning

He called:

Mr Stephen Brown, BSc(Hons) DipTP MRTPI	Woolf Bond Planning
Mr Duncan McInerney, BSc(Hons) MLD CMLI	The Environmental Dimension Partnership
Mr Martin Hawthorne, BSc(Hons) MRTPI	WYG Planning

### OTHER INTERESTED PERSONS:

Cllr Sean Woodward	Leader of Fareham BC and ward member for Sarisbury
Mr Jim Wood	Chairman, Burr ridge & Swanwick Residents' Association
Mr John Grover	Local resident
Mr Clive Nightingale	Local resident
Miss Sarah-Jane Moore	Local resident
Ms Suzanne Rosenbrier	Local resident (also speaking on behalf of Ms Kate Winkworth, local resident)
Mr Don Frost	Local resident

## **DOCUMENTS TABLED AT THE INQUIRY AND AFTERWARDS**

### **TABLED BY THE APPELLANTS**

- 1 Table: housing completions against requirement, 2006-14
- 2 Eastleigh Borough Local Plan examination: Inspector's preliminary report on housing needs and supply, 28 November 2014
- 3 Dartford BC v SoS and Landhold Capital Ltd: judgement dated 24 June 2014 [*2014 EWHC 2636 Admin*]
- 4 Photographs of the appeal site from the railway line
- 5 Photographs of the appeal site from Bridge Road, December 2014
- 6 Swanwick Marina – approved plan
- 7 Secretary of State's appeal decision – Droitwich Spa (APP/H1840/A/13/2199085)
- 8 Secretary of State's appeal decision – Ramsgate (APP/Z2260/A/14/2213265)
- 9 Appeal decision – Swanley (APP/G2245/A/13/2197478)
- 10 Bus timetables
- 11 Train timetables: Bursleden - Southampton
- 12 Train timetables: Bursleden - Portsmouth
- 13 Welborne strategic framework plan, annotated by Mr Hawthorne to show land not controlled by the promoters
- 14 Correspondence relating to screening direction for Welborne development
- 15 Executed unilateral undertaking, dated 9 December 2014
- 16 Appellants' suggested wording for a condition restricting development on part of the site, and related plans
- 17 Mr Boyle's closing submissions
- 17A Email dated 23 December 2014 in response to the Ministerial letter re SHMAs

### **TABLED BY THE COUNCIL**

- 18 Appeal decision – Storrington (APP/Z3825/A/13/2202943)
- 19 Appeal decision – Emsworth (APP/L3815/A/13/2198341)
- 20 Emails relating to various housing supply sites
- 21 Welborne – planning programme chart
- 22 The Solent Disturbance Mitigation Project Interim Framework – report to PUSH Joint Committee, 25 March 2014, and minutes
- 23 Mr Home's summary statement
- 24 Inspector's decision re land at Blaby (S62A/2014/0001)
- 25 Swanwick Marina – planning permission and officers' report
- 26 S Northants v SoS and Barwood Homes Ltd: judgement dated 10 March 2014 [*2014 EWHC 570 Admin*]
- 27 Mr Ground's closing submissions
- 27A Email dated 22 December 2014 relating to the Ministerial letter re SHMAs

### **TABLED BY THE OTHER PARTICIPANTS**

- 28 Cllr Woodward's statement
- 29 Mr Wood's statement
- 30 Mr Grover's statement
- 31 Mr Nightingale's statement
- 32 Miss Moore's statement
- 33 Ms Winkworth's written submission (presented by Ms Rosenbrier)
- 34 Aerial photograph dated 2013, tabled by Mr Grover

### **OTHER TABLED DOCUMENTS**

- 35 Statement of Common Ground on 5-year housing land supply
- 36 Extracts from Core Strategy 'interactive' proposals map
- 37 Proposed condition re affordable housing (tabled jointly)
- 38 Letter from the Minister of State for Housing and Planning, dated 19 December 2014, re Strategic Housing Market Assessments



## Appeal Decision

Inquiry held on 25 April 2017

Site visit made on 27 April 2017

by **S R G Baird BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 14 August 2017**

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**Appeal Ref: APP/A1720/W/16/3156344**

**Land north of Cranleigh Road and west of Wicor Primary School,  
Portchester, Fareham, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Persimmon Homes South Coast against the decision of Fareham Borough Council.
  - The application Ref P/15/0260/OA, dated 17 March 2015, was refused by notice dated 24 March 2016.
  - The development proposed is residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping on land north of Cranleigh Road and west of Wicor Primary School, Portchester, Fareham, Hampshire in accordance with the terms of the application, Ref P/15/0260/OA, dated 17 March 2015, subject to the conditions contained at Annex A of this decision.

### Preliminary Matters

2. The application was made in outline with all matters other than means of access reserved. The appellant and the local planning authority (lpa) confirmed that the drawings that comprise the planning application are Drawing Nos. LOC 1 Rev D – Location Plan and J-D1708.00 - Site Access Layout and Highway Improvements. The application plans are supported by 2 Illustrative Plans; Drawing Nos. 01 Rev W- Illustrative Site Plan and 2498-SK-04 Rev P3 – Indicative Landscape Strategy.
  3. The appellant has submitted a signed S106 Unilateral Undertaking (UU) providing for financial contributions towards: (a) mitigation in accordance with the Interim Solent Recreation Mitigation Partnership and (b) the approval and monitoring of a Travel Plan. In addition, the UU provides for the laying out of the public open space and that 40% of the dwellings would be affordable housing units.
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4. An application for an award of costs was made by Persimmon Homes South Coast against Fareham Borough Council. This application is the subject of a separate Decision.
5. Following the close of the inquiry, the Supreme Court issued a judgement<sup>1</sup> concerning the interpretation of paragraph 49 of the National Planning Policy Framework (Framework) and its relationship with Framework paragraph 14. The parties were given an opportunity to comment on the implications of this judgement for their cases. I have taken the judgement and the parties' comments into account in coming to my decision.

### **Main Issues**

6. These are:
  - (i.) whether the lpa can demonstrate a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land supply (HLS);
  - (ii.) the effect on the supply of Best and Most Versatile (B&MV) agricultural land; and
  - (iii.) the effect on the character and appearance of the area.

### **Reasons**

7. The development plan for the area includes the Core Strategy (CS) adopted in August 2011, the Local Plan Part 2: Development Sites and Policies adopted in June 2015 (LP2) and the Local Plan Part 3: The Welbourne Plan adopted in June 2015 (LP3). The lpa has commenced a Local Plan Review (LPR). It is anticipated that a draft Local Plan will be published for consultation in September 2017.

#### Issue 1 - Housing Land Supply

8. Framework paragraph 47 seeks to boost significantly the supply of housing. Lpas are enjoined to ensure that Local Plans meet the full, objectively assessed needs (OAN) for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. Lpas are to identify and update annually a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land against their housing requirements with an additional buffer of 5% or 20% where there has been a record of persistent under delivery of housing.
9. Here, the lpa's 5-year HLS calculation is based on the requirements of the CS, in particular Policy CS2, adopted in 2011. The CS has a plan period running from 2006 to 2026 and was produced in the context of the no longer extant regional strategy (The South-East Plan) and the then emerging South Hampshire Strategy (SHS), a non-statutory sub-regional plan produced by a consortium of several lpas.
10. Given the CS was adopted several months before the publication of the Framework and the CS housing requirement is largely based on the regional

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<sup>1</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).

strategy it is not a Framework compliant OAN. Although LPs 2 and 3 post-date the Framework, neither plan undertakes the identification of an OAN.

11. Given the above, and in light of the Navigator appeal decision<sup>2</sup>, the appellant submits that the starting point for calculating the HLS position should be based on the April 2016 Objectively Assessed Housing Need Update produced for the PUSH<sup>3</sup> authorities and the June 2016 PUSH Spatial Position Update. Both studies identify an OAN for Fareham that is materially higher than the CS housing requirement. The Ipa's position is that as LPs 2 and 3 have been found sound, and in light of PPG and Ministerial guidance on the use of SHMAs the housing requirement used to calculate the HLS is that contained in the CS. The Ipa's position is that until the LPR has been the subject of consultation, examination and adoption it is premature to use the PUSH OAN as the Borough's housing requirement.
12. PPG<sup>4</sup> advises that housing requirement figures in an up-to-date, adopted LP should be used as the starting point for calculating the 5-year HLS. PPG advises that considerable weight should be attached to the housing requirement figures in adopted LPs, which have successfully passed through the examination process, unless significant new evidence comes to light. However, PPG notes that evidence that dates back several years, such as that drawn from revoked regional strategies may not adequately reflect current needs. Thus, where evidence in a LP has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs i.e. SHMAs should be considered. That said the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints.
13. In December 2014, in a Ministerial letter, the Government clarified the policy position on emerging evidence in the form of SHMAs. The letter notes that the publication of a locally agreed assessment provides important new evidence and where appropriate will promote a revision of housing requirements in LPs. Lpas are expected to actively consider the new evidence over time and, where over a reasonable period they do not, Inspectors could reasonably question the approach to HLS. The Minister goes on to note that the outcome of a SHMA is untested and should not automatically be seen as a proxy for a final housing requirement in LPs or that it does not immediately or, in itself, invalidate housing numbers in an existing LP.
14. Here, the CS housing requirement is largely based on the no longer extant South East Plan, whose evidence base dates back to at least 2000. It is accepted that the CS does not contain a Framework compliant assessment of OAN and neither LPs 2 or 3 purport to set a housing requirement based on an OAN. The 2014 Ministerial guidance, in my view, restates the advice contained in the PPG and does not, in itself, preclude using up-to date SHMA information to assess the 5-year HLS.
15. The latest assessment of the "Policy-Off" OAN is contained in the April and June 2016 PUSH reports. These documents, as the introduction to the April

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<sup>2</sup> APP/A1720/A/14/2220031.

<sup>3</sup> Partnership for Urban South Hampshire.

<sup>4</sup> Paragraph 030 Ref ID: 3-030-20140306.

2016 report says, provide an analysis of housing need, which for Fareham is 420 dpa and 450 dpa respectively. These are substantial bodies of work that have been carried out in accordance with PPG guidance and at least one lpa has adopted the PUSH OAN calculated for its area as the basis for calculating the 5-year HLS. Here, the lpa acknowledges that the PUSH April 2016 OAN is the best evidence on the OAN for Fareham. I have taken careful note of the Minister's reference to lpa's considering the evidence over time and the reference to a reasonable period. Whilst the 2 reports are relatively recent, the lpa was aware during the Navigator appeal in December 2014 that the OAN identified in the 2014 South Hampshire SHMA was materially higher than the CS requirement. The decision in the Navigator appeal, which was not challenged, was predicated on an acceptance that the 2014 OAN provided a more suitable basis for a 5-year HLS calculation. In my experience it is rare in the extreme to conclude that the "Policy-Off" OAN is likely to reduce and it is clear from the April and June PUSH OAN reports that it continues to rise materially.

16. In line with PPG advice, it is, in my view, reasonable to conclude that the CS/LP 2 housing requirement is materially out-of-date and is derived on a basis that is inconsistent with the Framework. Thus, having regard to the case law<sup>5</sup> referred to, PPG and Framework policy, I consider that the 5-year HLS supply should be assessed on the basis of the PUSH April 2016 OAN.
17. Before dealing with the assessment of the 5-year HLS position, it is appropriate to deal with the matter of whether a 5 or 20% buffer should be added to the housing requirement. The lpa add a buffer to the housing requirement set out in the CS and LP 2, but not to the contribution to be made by the major urban extension at Welbourne (LP 3). The exclusion of Welbourne is predicated on the basis that it is a site specific allocation implementing a large-scale development proposal in the CS. I am not aware that there is support for such an approach either in the Framework or PPG and read on its face the Framework suggests that the buffer should be applied to the requirement as a whole. Accordingly, I consider the buffer figure should be applied to the requirement as a whole.
18. PPG<sup>6</sup> advises that the approach to identifying a record of persistent under delivery inevitably involves questions of judgement in order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing. The guidance indicates that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle. Here, I have details of net completions for the years 2006/07 to 2015/16 and these figures are not disputed by the lpa. For the period 2006/07 to 2010/11 the CS Policy CS2 requirement is applied and from then until 2015/16 the appellant applies the OAN figure taken from the PUSH April 2016 assessment of OAN. This is on the basis that the PUSH OAN figure is calculated from 2011. On this basis, completions only exceed the housing requirement in 2 out of the last 10 years. However, in the period up until 2014 when the then PUSH SHMA identified an OAN of 395 dpa the lpa could not have been expected to meet a

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<sup>5</sup> City and District of St Albans and The Queen (on the application of) Hunston Properties Limited Secretary of State for Communities and Local Government and anr [2103] EWCA Civ 1610 & Gallagher Homes Limited Lioncourt Homes Limited and Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin).

<sup>6</sup> Paragraph 035 Ref ID: 3-035-20140306.

need that it was not aware of. On this basis, allowing for peaks and troughs in the housing market it appears to me that there has been significant under-delivery in only 3 out of the last 10 years. On this basis, the application of a 20% buffer is not, in my view, justified.

19. Turning now to the 5-year HLS, I have considered 2 scenarios. One based on the requirements of CS Policy CS2, the lpa's preferred scenario, and one based on the up-to-date OAN figure. On the CS based approach, the 5-year housing land requirement is some 1,932 dwellings and the lpa claim a deliverable supply of some 2,003 dwellings, a surplus of some 71 units giving a 5.18-years' supply of housing land<sup>7</sup>. However, taking into account my conclusion on the appropriateness of excluding Welbourne from the buffer figure including it within the 5% allowance on the whole of the requirement would still return a HLS marginally above 5-years. The surplus would be reduced to some 13 units; a figure the lpa does not dispute.
20. The appellant disputes the deliverability of 9 of the LP 2 allocations, the deliverability of the brownfield site at Warsash Maritime Academy and the ability of the Welbourne allocation to deliver some 425 dwellings in years 4 and 5 of the HLS calculation. Using the lpa's CS housing requirement figure, the appellant's calculation gives a shortfall of some 1,965 units and estimates a 3.28-years' supply of housing land.
21. In coming to my conclusions on the deliverability of the disputed LP 2 sites, I have taken careful note of the lpa's submissions that the allocated sites were found "sound" by the Inspector when he examined LP 2 and that the sites continue to be listed in the Annual Monitoring Report (AMR). That said, LP 2 was examined in late 2014 based on a draft plan submitted for examination in mid-2014 and no doubt based on evidence obtained during 2013. The November 2016 AMR, other than containing a list, provides no detailed assessment of the sites. These assessments are, in my view, snapshots in time, which in the case of LP 2 were undertaken between 3 and 4 years ago. The deliverability of these sites needs to be kept under robust review and, given the paucity of information contained in the AMR, the value of these in making an up-to-date assessment of the HLS is limited.
22. To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable<sup>8</sup>. PPG<sup>9</sup> indicates that the 5-year HLS must be underpinned by "...robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out."
23. At the inquiry, the lpa provided an updated assessment of the deliverability of the disputed sites. However, the information provided on each site was limited and indeed the lpa's witness acknowledged that he did not have detailed information on the sites. The appellant's submission that the lpa's evidence regarding deliverability was based on, "...discussions with others about discussions with others" is an apt description. In my view, the lpa's evidence on deliverability relating to the LP 2 sites falls well below the

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<sup>7</sup> Table AB 1 submitted by the lpa at the inquiry.

<sup>8</sup> Footnote 11, National Planning Policy Framework.

<sup>9</sup> Paragraph 030 Ref. ID: 3-03020140306.

threshold set by PPG in that it is neither robust nor clearly and transparently set out. I have similar concerns regarding the inclusion within the 5-year supply of 100 units at Warsash Maritime Academy. Although this is a substantial site, the level of detail provided by the lpa on its deliverability is thin and lacks clarity and transparency.

24. LP 3 allocates some 371ha of mainly greenfield land at Welbourne to deliver some 6,000 dwellings and the lpa includes some 425 units within the 5-year supply in years 4 and 5. The delivery of Welbourne is a major undertaking and already the delivery of units has been pushed back in the programme. At one time the lpa considered that the delivery of dwellings would commence in 2016 with 120 units being completed by the end of the first quarter in 2017. Whilst I accept that significant pre-planning work has been carried out, a delivery partner will not be appointed until the beginning of 2018, major planning applications will have to be prepared and already, albeit as a precaution, the lpa is contemplating the use of compulsory purchase powers. Whilst I acknowledge the lpa's commitment to the delivery of Welbourne, on the evidence before me, it would appear that the potential to deliver a significant number of units towards the end of the 5-year period is optimistic.
25. In light of these findings, I am unable to safely conclude that at least 315 units, comprising the disputed list of LP 2 sites and the brownfield site at Warsash Maritime Academy, are capable of being considered as deliverable within the 5-year period. In this context, the lpa cannot demonstrate a 5-year supply of deliverable housing land.
26. In the scenario where the up-to-date OAN is used to derive the 5-year housing requirement and using the lpa's supply figures the lpa accepts that it could not demonstrate a 5-year HLS. At most, the evidence indicates that there would be a supply of some 3.6 years. However, given my conclusions regarding the deliverability of the disputed sites, I consider the HLS would be marginally over 2 years.
27. Drawing all of the above together, on whatever approach is used to identifying the 5-year housing land requirement, the lpa cannot demonstrate a 5-year supply of deliverable housing land. Indeed, on the balance of probabilities the available supply is well below the 5-year threshold.

#### Issue 2 – Best & Most Versatile Agricultural Land

28. The majority of the site is Grade 1 and the remainder Grade 2 agricultural land and is classed as best and most versatile land<sup>10</sup> (B&MV). CS Policy CS16 seeks to prevent the loss of B&MV. The Framework does not place a bar on the development of B&MV agricultural land. Framework paragraph 112 identifies that where development would involve the use of B&MV land, the economic and other benefits of that land should be taken into account and goes on to say where significant development is demonstrated to be necessary the use of poorer quality land should be used in preference to that of a higher quality i.e. apply a sequential approach. Here, given the appeal site extends to some 5.5ha, this proposal is not, in my view, a significant development where the sequential approach is engaged.

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<sup>10</sup> Annex 2, National Planning Policy Framework.

29. CS Policy CS16 was predicated on guidance contained in PPS7<sup>11</sup>, which the Secretary of State in his 2006 decision<sup>12</sup> described as containing a strong presumption against the loss of land of high agricultural value. PPS7 is no longer extant and CS Policy CS16, given that it says in a straightforward manner that it will prevent the loss of B&MV agricultural land without an opportunity to balance potential harm against potential benefits, is, in my view, inconsistent with the Framework and subject to the guidance contained at Framework paragraph 215.
30. The development would result in the permanent loss of B&MV agricultural land and as such would conflict with the provisions of CS Policy CS16. Accordingly, it must feature on the negative side of the planning balance, albeit the scale of the permanent loss would be limited.

#### Issue 3 – Character & Appearance

31. The appeal site abuts but lies outside the defined settlement boundary of Portchester. Whilst the development plan treats the area as countryside it is not subject to any landscape designation. Relevant development plan policies are CS Policies CS14 and 17 and LP 2 Policy DSP6. Policy CS14 indicates that development outside the defined settlement boundary will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Policy CS 17 seeks high quality design and layout and development should respond positively to and be respectful of key characteristics of the area including landscape. Except for certain categories of development, which do not apply in this case, LP 2 Policy DSP6 has a presumption against new residential development outside the defined settlement boundary. As such the proposal would be in conflict with LP 2 Policy DSP6.
32. Core Principles of the Framework seek to: ensure that planning secures high quality design ensuring that account is had to the different roles and characters of different areas recognising the intrinsic character and beauty of the countryside and a contribution to the conservation and enhancement of the natural environment. Framework paragraph 109 reiterates that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.
33. Both parties referred to various landscape character assessments. Of these the Fareham Borough Landscape Assessment examines the finest grain and is, in my view, the most relevant. In terms of landscape character, the appeal site sits on the eastern edge of Local Landscape Character Area (LCA) 12–Cams Wicor Coastal Fringe and to the south and east of LCAs 36 and 38 Urban Areas of Downend and Portchester South. LCA 12 is described as a discrete parcel of open landscape contained by the coast and the urban fringe. Whilst the main feature of this LCA is the extensive parkland and woodland of the Cam Hall Estate on its western edge the description notes that the LCA includes areas of open amenity landscape, fringe pasture and coastal industry to the east. The essential characteristics of the area are: an area of flat or gently undulating land occupied by mixed but open landscapes; a strong coastal influence and a strong fringe character with

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<sup>11</sup> Planning Policy Statement 7: Sustainable Development in Rural Areas.

<sup>12</sup> APP/A1720/A/05/1176455.

valuable areas of open space with attractive views out across Portsmouth Harbour and to Portsdown Hill and the Cams Hall Estate. The enhancement priorities for the area are to: maintain the open unbuilt character, particularly the estuary and coastal margins and improve the landscape quality of areas which lie between the settlement boundaries and the coast.

34. In terms of landscape and visual impact, whilst the appellant and the lpa use different terminology, in my view they both result in broadly the same outcome. Both parties agree that there would be substantial and adverse landscape and visual impacts. What is in dispute is the spatial extent over which these adverse effects would be experienced and whether the appeal site should be classed as a "valued" landscape.
35. In terms of visual impact, I had the opportunity to extensively walk the roads immediately around the site and the publicly accessible areas to the west. In addition, I visited Portsdown Hill and was able to assess the impact of the development from publically accessible vantage points.
36. Within the immediate area of the site from Cranleigh Road along its southern boundary and from Cranleigh Road southwards towards the junction with Gatehouse Road, the visual impact of the development to be at its highest, i.e. substantial and adverse. Further to the west along Cranleigh Road and from vantage points on the public footpaths and open space to the west, parts of the development, mainly the upper storeys and roof planes would be visible. However, the visual impact of the development would be significantly reduced by the degree of separation and the presence of existing tree/hedge planting and new boundary planting that could be conditioned as part of any permission. The magnitude of this impact would range from moderate to minor adverse depending on distance from the site.
37. Given there is no public access to the site and given the extent of intervening planting and industrial development on the foreshore there would be no material impact on views out over Portsmouth Harbour. In this context, the development would only have a limited adverse impact on views towards Portsdown Hill. The development would be in the foreground of the built-up area to the north and east and would not obscure publically available views of the hill from the east.
38. From public vantage points on Portsdown Hill there are sweeping panoramic views across Portchester and Portsmouth Harbour. Whilst the development would be noticeable, it would be seen as a modest extension of the existing built-up development to the north and east and against the backdrop of the housing area to the south of Cranleigh Road and mature planting beyond. The visual impact of the development would be mitigated by the above factors and the degree of separation from Portsdown Hill. Views of Portsmouth Harbour would not be interrupted or obscured and the wide sweep of the panoramic views would be maintained. In this context, the visual impact of the development from these vantage points would be minor.
39. Turning to whether the appeal site should be identified as a "valued" landscape and in the context of Framework paragraph 109 one whose enhanced planning status should be taken account of in the balancing exercise. I have taken careful note of the submissions made by interested persons and I was left in no doubt about their views on value. All landscapes are valued by someone at some time, particularly countryside

that is threatened by development. However, that does not necessarily make it a valued landscape for the purposes of Framework paragraph 49.

40. Although the Framework refers to valued landscapes it does not provide a definition of what type of landscape that might be. Framework paragraph 109 starts by reiterating the wider objective of enhancing the natural environment, which I take to mean the countryside in general and then it goes on to refer to valued landscapes, which must mean something more than just countryside in general. Case law<sup>13</sup> and Inspectors' decisions have identified that "valued" means something more than popular, such that a landscape was "valued" if it had physical attributes which took it out of the ordinary. In addition, the Guidelines for Landscape and Visual Impact Assessment (GLVIA3), provides at Box 5.1 a range of factors that can help in the identification of valued landscapes. These include landscape quality/condition; scenic quality; rarity, representativeness; conservation interests recreation value; perceptual aspects and associations. Whilst some of the factors go beyond the threshold identified by case law the Box 5.1 headings provide a useful context within which to assess "value". However, this is not a technical process and relies on subjective, albeit informed professional, judgement/experience.
41. Given the urbanising influence of built development on the northern eastern and southern boundaries and the generally overgrown nature of the site, I consider the landscape quality/condition of the site to be low/medium. For similar reasons, the site displays limited aesthetic appeal and it has low scenic value. Rarity and representativeness can be dealt with together. This is a landscape that does not contain rare landscape types or features. As such in terms of rarity and representativeness, I consider the value of the site/landscape to be low.
42. Given that the site has been neglected for some considerable time, the presence of the badger sett and the submissions regarding its ecology, it attracts a medium value for its conservation interest. There is no public access to the land other than it being a piece of a larger area of open land and has low recreational value and a medium value in terms of perceptual aspects. As far as I am aware the site /landscape has no cultural associations and as such attracts a low value. Reiterating again that this is not a technical exercise, drawing the Box 5.1 factors together, I consider the nature and value of the landscape of the appeal site to be ordinary/low. Combining this "score" with the case law requirement that the landscape should display physical attributes that takes it out of the ordinary, I conclude, that when looked at in the round the appeal site is not a Framework paragraph 109 valued landscape and does not benefit from the enhanced planning status that such an attribution would bring to the balancing exercise.
43. On this issue, the development would have a highly localised substantial and adverse impact on landscape character and visual impact. However, this impact would reduce with distance and for the most part in the wider area the landscape character and visual impact of the development would be

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<sup>13</sup> Stroud District Council v Secretary of State for Communities and Local Government [2015] EWHC 488 (Admin) & Cheshire East Borough Council v Secretary of State for communities and Local Government [2016] EWHC 694 (Admin).

minor moderate. That said the landscape and visual harm resulting from the development would conflict with CS Policies 14 and 17 and LP 2 Policy DSP6.

## **Other Considerations**

### Highways

44. I understand the concerns raised by residents particularly regarding the impact of traffic on congestion on the wider network and on Hatherley Crescent/Cornaway Lane at school dropping off/pick-up times. The planning application was accompanied by a robust Transport Assessment (TA) the scope of which was agreed with Hampshire County Council (HCC) as the Highway Authority (HA). In light of this study and its findings, the HA and the Ipa, subject to the imposition of appropriate planning conditions, have no objection to the proposal on highway safety or traffic generation grounds. I have no reason to disagree with those conclusions.
45. In terms of the impact on the wider area, the TA concludes that the capacity of junctions within the study area would not be significantly impacted upon and that the estimated marginal increases in queue lengths would not significantly impact on the operation of the highway network. Congestion occurring at school drop off and pick-up times is restricted to short periods of the day and occurs only on weekdays during term time. Given the location of the site directly abutting the school, the development would be unlikely to generate additional vehicular traffic to and from the school. In my experience, additional traffic generated by the development would only likely to have an impact during the short morning drop-off window. These impacts are not a reason to withhold permission.

### Ecology

46. The site is located some 350m from the Portsmouth Harbour Site of Special Scientific Interest (SSSI) which forms part of the wider Portsmouth Harbour Special Protection Area (SPA) and Ramsar Site. The appellant submitted ecological appraisals and produced an Ecological Construction and Management Plan. Given the proximity of the site to the national and internally designated sites referred to above, there is potential for the development to affect the interest features for which they were designated.
47. The appellant submitted to the Ipa a Habitat Regulations Assessment (HRA), which has been assessed by Natural England (NE). Based on what I consider to be a robust study, the HRA concludes that, having regard to measures that could be built-into the scheme and a financial contribution to the Solent Recreation and Mitigation Partnership, significant effects are unlikely to occur either alone or in combination on the interest features of the SPA and Ramsar. In light of these finding, and similar to the conclusion reached by NE, I conclude that an appropriate assessment under the regulations<sup>14</sup> is not required. Similarly, subject to the development being carried out in accordance with the details submitted with the application, NE indicates that the development would not damage or destroy the interest features for which the Portsmouth Harbour SSSI has been notified. Again, I have no reason to disagree with that conclusion.

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<sup>14</sup> The Conservation of Habitats and Species Regulations 2010 (As Amended).

48. There is an active badger sett within the site, which the appellant proposes to relocate within the area of public open space to the west. Badgers and their setts are protected by legislation<sup>15</sup>. Whilst the lpa has no objection to the relocation, the developer would require a separate licence from NE to remove the badgers. Whilst I note the concerns raised regarding the efficacy of artificial badger setts, they are, in my experience, in common usage and successful. I have no reason in this case to conclude there would be unacceptable harm or loss.
49. From the representations made both orally and in writing, I am in no doubt that the appeal site is highly regarded by local residents and the adjacent primary school as an ecological resource. The school's activities in introducing its pupils to the natural world are substantial and nationally recognised. Although the appeal site is privately owned and there is no public access to it, I recognise that the school views the site as a resource and an indirect source for the wildlife that inhabits the school site. Clearly whilst there would be some loss of habitat, this relates to many species that are common and widespread. The proposed area of public open space albeit it would be divorced from the school grounds by a housing estate, would be publicly available and could be laid out and managed as an improved ecological resource. Moreover, the tending and maturing of private gardens does provide a range of diverse habitats for a wide range of species. Whilst not a direct replacement the variety of habitats provided by private gardens would mitigate any impact on local ecology.
50. Drawing all of the above together, I conclude that the proposed development would not have a materially unacceptable effect on local ecology.

#### Education and Health

51. The development would generate a demand for 31 primary school places and 22 secondary school places. Research by the appellant identifies that the 5 infant/junior schools in Portchester are full. The Northern Infant school has recently been expanded and the Northern Junior School has a proposal to expand in 2019. HCC as the local education authority (LEA) indicates that the local secondary school has spaces available to meet the needs of the development. Whilst there is pressure on local primary schools, the appellant's submission that some of the existing school places are taken up by pupils from out of the school planning area, which could be used by local children, is not disputed by the lpa. There is no objection from the lpa or LEA on the grounds that the proposal would result in unacceptable pressure on local education infrastructure. I have no reason to disagree.
52. Evidence submitted by the appellant indicates that all primary healthcare centres within some 2 miles of the site are currently accepting patients. Whilst there were submissions that appointments are not easy to obtain, this is not a local problem and is something that occurs nationwide. There is no objection from the local providing body for primary care or the lpa.

#### Benefits

53. The proposed development would deliver economic, social and environmental benefits. Chief amongst these are that the proposal would

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<sup>15</sup> Protection of Badgers Act 1992.

deliver up to 120 homes including up to 48 affordable units. Economic benefits that would flow from the application include those arising from employment during the development phase; a New Homes Bonus payment and increased Council Tax revenues. When undertaking the planning balance factors such as these are generally held to be benefits of development albeit they are benefits that would occur from most developments.

#### S106 Undertaking

54. Framework paragraph 204 and CIL Regulation 122 say that Planning Obligations should only be sought and weight attached to their provisions where they meet all of the following tests. These are: they are necessary to make the development acceptable in planning terms; they are directly related to the development; and they are fairly and reasonably related in scale and kind to the development.
55. NE's lack of objection to the development is based on the developer making a contribution to the implementation of the Solent Recreation Mitigation Scheme. The purpose of the contribution is to mitigate disturbance of the Portsmouth Harbour SSSI and the wider Portsmouth Harbour Special SPA and Ramsar Site. The UU provides a mechanism for the provision of affordable housing required by development plan policy and the provision and retention of the public open space. These obligations are necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, in this respect, the UU is consistent with the guidance at Framework paragraph 204 and Regulations 122 of the CIL Regulations and where appropriate, I have attached weight to them in coming to my conclusion
56. The UU provides for (i) the submission of a Full Travel Plan; (ii) the payment of £5,750 to Hampshire County Council made up of £750 towards the cost of approving a Full Travel Plan and £5,000 to monitor compliance with it; (iii) the appointment of a Travel Plan Coordinator and (iv) a Travel Plan Bond.
57. The submission of a Travel Plan is a matter that could be dealt with by the imposition of an appropriate condition. Here, the only explanation I have for the monitoring fees is that *"it has been assessed based on the highway authority's experience with regards to monitoring such developments and is justified to ensure that the modal targets within the Travel Plan area achieved and if not there are "punitive" measures within the travel plan that can be instigated to endeavour to achieve the desired modal targets. The monitoring process ensures this check."*
58. The test contained within the Framework and CIL Regulation 122 i.e. "necessary to make the development acceptable in planning terms" is a high threshold in that the obligation has to be necessary and not merely desirable. Moreover, there is nothing in the Planning Acts, the CIL Regulations, the Framework or PPG that suggest that an authority could or should claim monitoring fees as part of a planning obligation. The monitoring of the Travel Plan is, in my view, one of the functions of the County Council. Despite my request for supporting evidence, I conclude that

in the absence of a full justification supported by evidence<sup>16</sup> the payment of a monitoring fee and the provision of a Travel Plan Bond are unnecessary to make the development acceptable in planning terms nor am I in a position to conclude that the requested contribution and Bond are fair and reasonably related in scale and kind to the development. For these reasons, I consider the requested contribution does not accord with the tests set out in the Framework and CIL Regulation 122 and I have not taken it into account in coming to my decision.

### **The Planning Balance**

59. The starting point is that S38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 requires that decisions on applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
60. The site is located outside the settlement boundary of Portchester and does not fall within any of the categories of development that may be permitted by LP Policy DSP6; as such the proposal is in conflict with this policy. Both parties refer to CS Policy CS11, which refers to development within the settlement boundaries of Portchester being permitted. Given the specific nature of this policy and the location of the site outside the settlement boundary, I consider this policy is not relevant to the overall planning balance. I have concluded that the proposed development would have an adverse impact on landscape character and a substantial adverse visual amenity albeit that impact would be highly localised. As such the proposal would be in conflict with CS Policies CS14 and CS17. The proposal would result in the loss of B&MV and would be in conflict with CS Policy CS16.
61. Paragraph 2 of the Framework confirms that it is a material consideration in planning decisions. The fourth bullet point of Framework paragraph 14 has 2 limbs. The first limb indicates that where the development plan is absent, silent or relevant policies are out-of-date planning permission should be granted unless 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. The second limb indicates that development proposals should be granted unless or specific policies in the Framework indicate development should be restricted. Framework paragraph 49 says that relevant policies for the supply of housing should not be considered up-to-date, if the lpa cannot show a 5-year supply of deliverable housing sites. Framework paragraph 215 indicates that due weight should be given to relevant policies in existing plans according to their consistency with the Framework.
62. In relation to housing land supply, the lpa cannot demonstrate a 5-year supply of deliverable housing sites. In this context, the decision of the Supreme Court<sup>17</sup> indicates that such a shortfall triggers the fourth bullet point of Framework paragraph 14. In this case, based on the evidence before me it is only the first limb of the fourth bullet point that is engaged.

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<sup>16</sup> Planning Policy Guidance, Paragraph: 004 Reference ID: 23b-004-20150326.

<sup>17</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin) .

The appellant and the Ipa agree that CS Policy CS14 and LP 2 Policy DSP6 are not relevant policies for the supply of housing and I have no reason to disagree. Given, the nature of CS Policy CS 17 – first bullet point, I consider this is not a relevant policy for the supply of housing either.

63. Based on the evidence before me the housing land supply stands at just over 2-years resulting in a significant shortfall. I acknowledge that the Ipa is seeking to address its ongoing housing requirements through the preparation of the Local Plan Review and the promotion of the sustainable Urban Extension at Welbourne. That said, a consultation draft of the Local Plan Review is not anticipated to be published until September 2017 and I would not expect that plan to be adopted before mid-2018 at the earliest. Welbourne is the subject of an adopted LP and will be progressed through the appointment of a development partner who will not be identified until early 2018. Once identified the Ipa/development partner will subsequently need to involve themselves in land acquisition through negotiation and/or compulsory purchase and to submit/determine major planning applications. On all the evidence before me, it appears to me, given the scale of the development and the constraints involved, which include the provision of a new junction on the M27 (albeit up to 500 units may be permitted before the new junction is required), the potential for significant development within the 5-year period is limited. In these circumstances, the material shortfall in housing land supply will continue and the backlog of housing required to meet local needs will grow.
64. As far as I am aware there are no constraints that would delay this development and as such granting permission would, in line with the clear objectives spelt out at Framework paragraph 47, provide for a significant and material boost/contribution to meeting housing needs within the District, particularly affordable housing. Drawing all this together, I consider that the contribution the appeal site could make to meeting the District's housing needs attracts very substantial weight in the planning balance.
65. Whilst, the objectives of CS Policy C14, CS 17 and LP 2 Policy DSP6 in seeking to protect the countryside from development are consistent with the fifth Core Principle identified at Framework paragraph 17, I conclude in this case that the limited harm in terms of the loss of B&MV agricultural land and landscape character and visual impact would not significantly and demonstrably outweigh the benefits of this scheme in making a material contribution to the significant shortfall in housing land. Accordingly, having regard to Framework paragraph 14, I consider the proposed development represents sustainable development.
66. In coming to the above conclusion, I have had regard to the appeal decision issued by the Secretary of State in 2006. However, I consider this decision was issued in the context of a materially different development plan context. Then, although located in countryside, the area was also identified in the development plan as a Local Gap and a Coastal Zone. Here local policy indicated that development that would physically or visually diminish undeveloped land within the gap would not be permitted. Now, although still defined for planning purposes as countryside, the open area to the west and south of the built-up area of Portchester is no longer classed as a Local Gap or within the Coastal Zone.

67. For the reasons, given above and having regard to all other considerations, I conclude that the appeal should be allowed.

### **Planning Conditions**

68. For the avoidance of doubt and in the interests of proper planning and I have imposed a condition relating to the specification of plans (4)<sup>18</sup>. Conditions relating the submission of details and the implementation of approved schemes in relation to: the construction of the estate roads (6); boundary treatment (7); archaeological investigations (8); foul and surface water drainage (9); an arboricultural assessment (10); existing and finished ground level and finished floor levels (11); the prevention of mud on the highway (12) construction traffic access (13) and the submission of a Travel Plan (14) are reasonable and necessary in the interests of the appearance of the area, highway safety, the identification and preservation of potential archaeology and the protection neighbours' living conditions. Conditions relating the prevention of fires (15), hours of operation (16); the treatment of hard surfaces (17) and a restriction on eaves height (20) are reasonable and necessary in the interests of appearance and neighbours' living conditions. In the interests of the appearance of the area, a condition relating to landscape implementation and maintenance (18) is necessary. In the interests of ecology, a condition requiring the development to be carried out in accordance with the submitted Ecological Construction and Management Plan (19) is necessary. Where necessary and in the interests of precision and enforceability I have reworded the suggested conditions.
69. At the inquiry, the lpa and the appellant agreed that the suggested conditions relating to boundary treatment, access details, external lighting/floodlighting and the insertion of roof lights were matters that were covered by the submitted plans, were unnecessary , duplicated other conditions or were matters that could be dealt with as part of the reserved matters submissions. I have not imposed these conditions.

*George Baird*  
Inspector

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<sup>18</sup> Numbers relate to those in the Schedule of Conditions.

## **Annex A**

### **SCHEDULE OF CONDITIONS**

1. Details of the appearance, scale, layout and landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
4. The development shall be carried out in accordance with the following approved drawings: Location Plan - Drawing 6132 LOC Rev D and J-D1708.00 Site access Layout and Highway Improvements.
5. No housing development including gardens and roads shall take place to the west of the hedgerow running north to south through the site as shown on Drawing No. 01 Rev W- Illustrative Site Plan.
6. No development shall commence until details of the width, alignment, gradient and type of construction proposed for any roads, footways and/or access/accesses, to include all relevant horizontal and longitudinal cross sections showing the existing and proposed ground levels, together with details of street lighting (where appropriate), the method of disposing of surface water, and details of a programme for the making up of roads and footways have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
7. No development shall commence until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwellings are first occupied or in accordance with a timetable agreed in writing with the local planning authority and shall thereafter be retained at all times.
8. No development shall commence until a preliminary archaeological survey establishing the location, extent, nature and significance of archaeological remains on the site including a mitigation strategy, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the agreed mitigation strategy.
9. No development shall commence on site until details of sewerage and surface water drainage works to serve the development hereby permitted have been submitted to and approved in writing by the local planning authority. None of the dwellings shall be occupied until the drainage works have been completed in accordance with the approved details.
10. No development shall commence until an Arboricultural Impact Assessment Report and Method Statement for tree/hedgerow protection has been

- submitted to and approved in writing by the local planning authority and the approved scheme implemented. The tree/hedgerow protection shall be retained throughout the development period until such time as all equipment, machinery and surplus materials have been removed from the site.
11. No development shall commence until details of the internal finished floor levels of all of the proposed buildings in relation to the existing and finished ground levels on the site and the adjacent land have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  12. No development shall commence until details of the measures to be taken to prevent spoil and mud being deposited on the public highway by vehicles leaving the site during the construction works have been submitted to and approved in writing by the local planning authority. The approved measures shall be fully implemented upon the commencement of development and shall be retained for the duration of construction of the development.
  13. No development shall commence until the local planning authority have approved details of how construction traffic will access the site, how provision is to be made on site for the parking and turning of operatives and delivery vehicles and the areas to be used for the storage of building materials, plant, excavated materials and huts associated with the implementation of the permitted development. The areas and facilities approved in pursuance to this condition shall be made available before construction works commence on site shall thereafter be kept available at all times during the construction period, unless otherwise agreed in writing with the local planning authority.
  14. Prior to the commencement of construction works a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall include arrangements for monitoring and effective enforcement. Development shall be carried out in accordance with the approved details.
  15. No materials obtained from site clearance or from construction works shall be burnt on the site.
  16. No work relating to the construction of any of the development hereby permitted (including works of demolition or preparation prior to operations) shall take place before the hours of 0800 or after 1800 hours Monday to Friday, before the hours of 0800 or after 1300 hours on Saturdays or at all on Sundays or recognised public holidays, unless otherwise first agreed in writing with the local planning authority.
  17. No development shall proceed beyond damp proof course level until details of the finished treatment of all areas to be hard surfaced have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and the hard surfaced areas subsequently retained as constructed.
  18. The landscaping scheme submitted under Condition 1 above, shall be implemented within the first planting season following the commencement of the development or as otherwise agreed in writing with the local planning

authority and shall be maintained in accordance with the agreed schedule. Any trees or plants which, within a period of 5 years from first planting, are removed die or become seriously damaged or defective, shall be replaced, within the next available planting season, with others of the same species, size and number as originally approved.

19. The development shall be carried out strictly in accordance with the Ecological Construction and Management Plan dated August 2016 and updated November 2016.
20. The dwellings shall not exceed two-storey eaves height.

## **ANNEX B**

### **APPEARANCES**

#### FOR THE APPELLANT

Christopher Boyle QC, instructed by the Bryan Jezepeh Consultancy.

He called:

Steven Brown BSc (Hons) Dip TP, MRTPI  
Woolf Bond Planning.

Liz Bryant MA, CMLI  
Allen Pyke Associates.

Michael Knappett BSc (Hons), BTP, MRTPI.  
Bryan Jezepeh Consultancy.

#### FOR THE LOCAL PLANNING AUTHORITY

Paul Stinchcombe QC, instructed by Fareham Borough Council

He called:

Andy Blaxland  
Director, Adams Hendry Consulting Limited.

Nicola Brown BA (Hons), BLand Arch, CertUD, CMLI  
Director, Huskisson Brown.

#### INTERESTED PERSONS

Mr Mullen.  
Mrs Fox.  
Ms Sawyer.  
Mr Woodman Portchester Civic Society.  
Cllr Price.  
Cllr Walker.  
Cllr Bell.  
Cllr Fazackarley.  
Cllr Cunningham.  
Ms Morton, Wicor Primary School.  
Mr Cable.  
Mr Britton.  
Mrs Kirk.

#### DOCUMENTS SUBMITTED AT THE INQUIRY

- Doc 1 - Phides Estates (Overseas) Limited and Secretary of State for Communities and Local Government and Shepway Council and David Plumstead [2015] EWHC 827 (Admin).
- Doc 2 - Supplementary Tables AB1, AB2 & AB3 to the evidence of Mr Blaxland.

- Doc 3 - Additional Suggested Condition – Field A.
- Doc 4 - Note in response to question from Mr Boyle.
- Doc 5 - Submissions by Cllr Walker.
- Doc 6 - Submissions by Cllr. Price.
- Doc 7 - Submissions by Cllr. Bell.
- Doc 8 - Submissions by Cllr Fazackarley.
- Doc 9 - Submissions by Cllr Cunningham.
- Doc 10 - Submissions by Portchester Civic Society.
- Doc 11 - Submissions by Mr Cable.
- Doc 12 - Submissions by Wicor Primary School.
- Doc 13 - Submissions by Mrs Kirk.
- Doc 14 - Summary of S106 Unilateral Undertaking.
- Doc 15 - Lpa CIL Compliance Schedule.
- Doc 16 - Email dated 27 April 2017, Response by Hampshire County Council regarding S106 Unilateral Undertaking Travel Plan Contributions.
- Doc 17 - S106 Unilateral Undertaking.
- Doc 18 - Minutes of Planning Committee 24 March 2016.
- Doc 19 - Appellant’s application for coasts.
- Doc 20 - Lpa response to the application for costs.

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED

- Doc 21 - Appellant’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).
- Doc 22 - Lpa’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).



## Appeal Decision

Inquiry Held on 6 - 9 November 2018

Site visit made on 9 November 2018

**by Kenneth Stone BSc Hons DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12<sup>th</sup> April 2019

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**Appeal Ref: APP/A1720/W/18/3199119**

**Land east of Posbrook Lane, Titchfield, Fareham, Hampshire PO14 4EZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Foreman Homes Ltd against the decision of Fareham Borough Council.
  - The application Ref P/17/0681/OA, dated 9 June 2017, was refused by notice dated 14 December 2017.
  - The development proposed is described as an 'Outline Planning Application for Scout Hut, up to 150 Dwellings, Community Garden, associated landscaping, amenity areas and means of access from Posbrook Lane in addition to the provision of 58,000 square metres of community green space'.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application was submitted in outline with all matters reserved for future consideration with the exception of access. The access details are shown on the plan 'Proposed Site Access 16-314/003E' which along with the 'Site Location Plan 16.092.01E' are the plans that describe the proposals. An illustrative plan was submitted and the latest iteration was 16.092.02F. However, this was for illustrative purposes only to demonstrate one way in which the site could be developed but does not form part of the formal details of the application.
3. Prior to the commencement of the Inquiry the Council and the appellant entered into a Statement of Common Ground. The original application had been submitted with the description of development in the banner heading above. The parties agreed that there was no requirement for the Scout Hut and removed this from the illustrative master plan and amended the description of development to reflect the amended proposed development.
4. I am satisfied that the proposed alteration to the scheme, which does not amend the red line boundary and makes only a minor adjustment to the overall scheme, is not material. I am satisfied that there would be no material prejudice to parties who would have wished to comment on the proposals and that the amended illustrative plan was available as part of the appeal documents and therefore available for parties to view and comment on. I have therefore considered the appeal on the basis of the amended description which

read as follows: 'Outline application for up to 150 dwellings, community garden, associated landscaping, amenity areas and a means of access from Posbrook Lane.'

5. In the Statement of Common Ground the Council and the Appellant agree that an Appropriate Assessment would be required in the light of The People Over Wind Judgement<sup>1</sup>. During the Inquiry a shadow Habitats Regulations Assessment document was submitted (APP4) to enable an Appropriate Assessment to be made. In this regard I consulted with Natural England to ensure that I had the relevant information before me if such an assessment were to be required. The main parties were given the opportunity to comment on Natural England's consultation response.
6. By way of an e-mailed letter dated 5 November 2018 the Secretary of State notified the appellant, pursuant to regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, that further information was required. The further information was publicised on 4 January 2019, a period of 31 days was given for the receipt of comments and the parties were given a period following the end of the publicity period to collate and comment on the matters raised.
7. I have had regard to all the Environmental Information submitted with the appeal including the original Environmental Statement, the Additional Information, the Shadow Habitats Regulations Assessment, the further responses and the parties' comments in reaching my conclusions on this appeal.
8. The Council has drawn my attention to a recent appeal decision, at Old Street, APP/A1720/W/18/3200409, which had been published since the Inquiry was conducted and in which similar issues were considered in respect of the Meon Valley. The parties were given the opportunity to comment on this decision.
9. The Government published a revised National Planning Policy Framework (the Framework), and updated guidance on how to assess housing needs as well as results of the Housing Delivery Test along with a technical note on 19 February 2019. The parties were given the opportunity to comment on how these may affect their respective cases. I have had regard to this information and the comments of the parties in reaching my decision.
10. I closed the Inquiry in writing on 19 March 2019.

### **Main Issues**

11. In the Statement of Common Ground the appellant and Council agree that with the completion of a satisfactory legal agreement reasons for refusal e through to l would be addressed. No objections to the Unilateral Undertaking were raised by the Council and these matters were not contested at the Inquiry. It was also agreed in the Statement of Common Ground that reason for refusal d could be overcome by the imposition of an appropriately worded condition, and I see no reason why this would not be appropriate.
12. On the basis of the above the remaining outstanding matters and the main issues in this appeal are:

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<sup>1</sup> The Court of Justice of the European Union judgement in the People over Wind and Peter Sweetman v Coillte Teoranta, case C-323/17

- The effect of the proposed development on the character and appearance of the area, including having regard to whether or not the site is a valued landscape and the effect on the strategic gap;
- The effect of the proposed development on the setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II\* listed buildings; and
- The effect of the proposed development on Best and Most Versatile Agricultural Land (BMVAL).

## Reasons

13. The development plan for the area includes The Local Plan Part 1: Core Strategy (2011 -2026) (LPP1), The Local Plan Part 2: Development Sites & Policies (2015) (LPP2) and The Local Plan Part 3: Welbourne Plan (2015) (LPP3).
14. LPP3 specifically addresses a new settlement at Welbourne and does not include policies that bear directly on the effects of the development the subject of this appeal. Its relevance is however material in the context of the wider housing land supply issues in the area.
15. In terms of LPP1 policy CS14 seeks to control development outside defined settlement boundaries seeking to resist proposals which would adversely affect its landscape character and function. While policy CS22 advises land within strategic gaps will be treated as countryside and development proposals will not be permitted where it affects the integrity of the gap and the physical and visual separation of settlements.
16. In LPP2 Policy DSP6 further advises in respect of residential development outside of defined urban settlement boundaries that it should avoid a detrimental impact on the character or landscape of the surrounding area. DSP5 addresses the protection and enhancement of the historic environment. In considering the impacts of proposals that affect designated heritage assets it advises the Council will give great weight to their conservation and that any harm or loss will require clear and convincing justification, reflecting the statutory and national policy positions.
17. Policy DSP40 in LPP2 includes a contingency position where the Council does not have a 5 year supply of housing land. It is common ground between the parties that the Council does not have a 5 year supply of land for housing albeit the extent, length of time this may persist and consequences are disputed. I address these latter matters further below however insofar as the parties agree that the Council cannot demonstrate a five year supply of housing land the contingency position in policy DSP40 is engaged and this advises that additional sites outside the urban area boundary may be permitted where certain criteria are met.
18. An emerging draft Local Plan, which in due course is anticipated to replace LPP1 and LPP2, was launched for consultation in autumn of 2017 but has now been withdrawn. At the time of the Inquiry I was informed that a further review is to take place following revisions to the National Planning Policy Framework and the Government's latest consultation in respect of housing figures. The Council propose to consult on issues and options relevant to the progression of the Council's new development strategy following the outcome

of the Government's recent consultation. Consultation on a new draft Local Plan is not now anticipated until the end of 2019.

19. The Titchfield Neighbourhood Plan 2011 – 2036 (TNP) is also emerging; it was published for consultation in July 2018 with a further draft submitted to the Council for a compliance check, in October 2018, prior to consultation as the submission draft. At the Inquiry it was confirmed that further documents were submitted to the Council and that the TNP complied with the Statutory requirements. The Council undertook Consultation on the submission draft between November 2018 and January 2019 but at this point in time the plan has not yet been submitted for independent examination. The TNP includes a plan identifying the strategic gap, the Meon gap, and the Defined Urban Settlement Boundary (DUSB) as well as housing policies which review the DUSB (DUSB 1) and address windfall sites (H1), affordable housing (H2), Local Need (H3) and Development Design (H4).

*Character and Appearance, including Valued Landscape and Strategic Gap*

20. The appeal site is an area of some 6.6 ha of open grazing field on the east side of Posbrook Lane. The land gently slopes from its north-west corner towards its eastern edge. The site is segregated from Posbrook Lane by a hedgerow but for the most part the site is open with little demarking fences, trees or hedge rows. There is some evidence of a previous subdivision of the site on a modern fence line however only limited post foundations remain and generally the whole site has a reasonably consistent grazed grassland appearance.
21. To the north, the appeal site abuts the settlement edge of Titchfield at an estate called Bellfield. The urban edge is open and harsh with little by way of softening landscaping. Towards the south-western corner the site abuts a cluster of buildings that includes the farmstead of Posbrook farm and which includes two Grade II\* listed buildings (the Farmhouse and the southern barn). The boundary between these is screened for the most part by a substantial tree and hedgerow belt. Beyond these and towards the south are open agricultural fields. To the east the site slopes down to the Titchfield Canal, valley floor and River Meon beyond.
22. The Meon Valley is a major landscape feature that runs through the Borough and slices through the coastal plain. The parties agree that the site is located within the Lower Meon Valley Character Area but disagree as to the finer grain character type as detailed in the 1996 and 2017 Fareham Landscape Assessments. The appellant points to the 2017 Assessment identifying the western part of the appeal site as being identified as open coastal plain: Fringe Character with a small portion of the site being open valley side. The Council contend that the whole site is more appropriately identified as open valley side.
23. The difference in opinion and identification relates to the influence of the urban settlement boundary, the topography of the site and other landscape features in the surroundings. The fact that the 2017 classification is based on somewhat historic data does call into question the accuracy at the finer grain. There is some evidence in terms of photographs and on site that the site was subdivided and that there may have been different practices implemented which resulted in parts of the site having a different appearance and therefore leading to a different classification at that stage. On site I was firmly of the view that the site was of an open character with little in the way of field boundaries, hedges or other landscape features to different areas of the site.

Whilst there was a break in the slope this was minimal and did not change the characterisation from a gentle slope. There were minor variations across the site and I was not persuaded that this was such a feature that would change the character type of the site. Finally, in the context of the urban settlement edge influence it is undeniable that it is there. There is a lack of screening and there is a harsh and readily visible urban edge. This however is a distinct break with the open rural field which then flows to the open agricultural fields beyond the farmstead cluster and the lower valley floor below. In my view in the wider context the urban influence is given too much weight in the appellant's assessment and in association with the sub division of the site into smaller fields adds to the reduced weight given to the effect of the proposed development.

24. The proposed development would result in the provision of a suburban housing estate of up to 150 units on an open field that would substantively change the character of the field. The field appears, when looking south and east, as part of the broader landscape compartment and part of the Lower Meon Valley landscape. Views back towards the site would result in the perception of the intrusion of housing further into the valley and valley sides to the detriment of the character of the valley. The characteristics of the site are consistent with those of the Meon Valley and representative of the open valley side which includes sloping landform, a lack of woodland with views across the valley floor and is generally pastoral with some intrusive influences of roads or built development.
25. The visual effects of the development would be evident from a number of public footpaths both through and surrounding the appeal site as well as along Posbrook Lane, to the south and from the valley floor and opposite valley side. The further encroachment of built development into the countryside would detract from the rural appearance of the area.
26. The potential for landscaping to screen and reduce the visual effects and to a certain extent provide some positive contribution was advanced by the appellant. Whilst additional landscaping along the proposed urban edge would produce an edge that was more screened and in effect a softer edge than present is undeniable and would of itself improve the appearance of the existing urban edge. However, this needs to be weighed against the loss of the open field separation of elements of built development and the creeping urbanisation of the area. Whilst planting would assist in reducing the direct line of sight of houses in the longer term there would still be effects from noise, activity, illumination in the evening along with the localised views that would inevitably and substantively change.
27. I would characterise the landscape and visual effects as substantial and harmful in the short to medium term, albeit this would reduce in the longer term, I would still view the adverse effect as significant.
28. There is some dispute as to whether the site is a valued landscape. The Lower Meon Valley is a significant landscape feature and both parties assessed the site against the box 5.1 criteria in Guidelines for Landscape and Visual Impact Assessment. In this context it is a reasonable conclusion that both parties accept that the Lower Meon Valley has attributes that are above the ordinary. There is some debate as to whether the appeal site contributes to these or is part of that as a valued landscape. On the basis of the evidence before me I

have no difficulty in accepting that the Lower Meon Valley is a valued landscape in the context of the Framework and this is a conclusion consistent with my colleague in the Old Road decision. From my visit to the site and the evidence presented to me I am of the view that the appeal site shares a number of those attributes including the nature of the rural landscape and topography, its scenic quality and that it is representative of the valley sides character type. The site does form part of the broad visual envelope of the Lower Meon valley and part of the landscape compartment and therefore should be considered as part of the valued landscape.

29. Turning to the issue of the strategic gap. The appeal site is located in the Meon Valley strategic gap. The purpose of the strategic gap as identified in policy CS22 is to prevent development that significantly affects the integrity of the gap and the physical and visual separation of settlements. Whilst the Council sought to broaden this out to include the setting of settlements that is not how the development plan policy or indeed its policy justification is written. This states the gaps help to define and maintain the separate identity of individual settlements and are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green corridors. To go beyond these factors in assessing the development against policy would be introducing tests that are not within the development plan.
30. The proposed scheme would extend the urban edge of Titchfield further into the gap than it presently is. There would however be no perception of coalescence or indeed any visual reduction of the separate settlements (I do not see the cluster of buildings as a separate settlement in this context). There would be no demonstrable reduction in the physical separation and the gap's integrity would not be significantly affected. Whilst there would be a minor outward extension in the context of the settlement pattern and separation of settlements the proposed development would be minor and would not result in a significant effect.
31. Overall for the reasons given above I conclude that the proposed development would result in material harm to the character and appearance of the area. This would result in harm to a valued landscape. There would however be no significant effect on the strategic Meon Gap. Consequently, the proposed development would conflict with policies CS14 and DSP6 which seek to protect the character and appearance of the area of land outside the defined urban settlement boundary but would not conflict with policy CS22.

*Setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II\* listed buildings*

32. South of Titchfield on the east side of Posbrook Lane there is an historic farmstead that includes the listed buildings of Great Posbrook and the southern barn at great Posbrook farm. Both of these are Grade II\* which puts them in the top 8% or so of listed buildings in the Country. They are a significant and invaluable resource.
33. The list description for Great Posbrook identifies it as a C16 house altered in the C19 with evidence of elements of C17 and C18 interior details. There is some question mark over the precise dating of the origins of the building with the Council pointing to evidence that it dates from early C17. While the alterations have created two parallel ranges the earlier T shaped form is unusual and is of particular architectural importance because of its rarity. The

main parties' experts agree that the building is of considerable historic interest due to its fabric, architectural composition and features.

34. The list description for the southern barn identifies it as a late medieval aisled barn. However, the Council point to more recent dendrochronology which indicates that it is likely to be late C16 or early C17 with the eastern end being C18. It is a substantial historic barn with considerable vernacular architectural interest being a good and relatively rare example of a high status English barn. Its size and scale demonstrating its association with a high status farm.
35. The listings make reference to other buildings in the cluster forming the farmstead including a store shed, small barn, cartshed and pigsties but note that these are of local interest only. The main listed buildings together with the buildings of local interest form an early farmstead with a manorial farmhouse, significant barn and numerous other buildings. There have been recent interventions as part of enabling development which resulted in the demolition of modern farm buildings the conversion of some of the historic buildings and the construction of new buildings to provide for additional residential occupation on the site. Much of the new building footprint was related to original buildings in an attempt to reinstate the historic arrangement of farm buildings in a courtyard pattern.
36. The significance of the listed buildings and the farmstead derives from the age, architectural quality, size, scale and relationship of buildings. There is a functional relationship with the adjoining land which was likely farmed as part of the farm holding and reasonable evidence to suggest that there may be an associative link with Titchfield Abbey which adds and contributes to this significance. There has been some more recent and modern infill development and recent housing within the farmstead adjacent and in the wider setting which has a negative impact and detracts from the significance. The wider setting of the site within a rural landscape assists in understanding the scale and status of the land holding, sets the farmstead in an appropriate open rural agricultural setting and separates it from the close by settlement of Titchfield. This contributes to the overall significance of these assets.
37. The proximity of the settlement of Titchfield and the exposed urban edge already have a negative impact on the wider setting of the heritage assets bringing suburban development close to the farmstead and reducing the wider rural hinterland.
38. The appeal site is formed by open land that wraps around the northern and eastern edge of the cluster of buildings within which the farmstead is set. It lies between the southern edge of Titchfield and the northern edge of the cluster of buildings and abuts the northern and eastern boundary of the farmhouse.
39. It is common ground that the proposals would not result in physical alterations to the listed buildings. There would be no loss of historic fabric or alterations to the architectural quality or form of the actual buildings. Similarly there would be no direct alteration of the farmstead.
40. Both parties also agree that the proposal would be located within the setting of the listed buildings and the farmstead. There is also agreement that the proposal would result in harm to the setting of the listed buildings by virtue of built development being closer to the buildings and reducing the rural setting of the buildings. Whilst both parties accept that the harm would be less than

substantial in terms of the Framework, the dispute arises in respect of the level of that harm. The appellant broadly contends that there are limited aspects where the effect would be perceived or experienced and with appropriate landscaping the effect would be reduced over time such that it would fall at the bottom end of the spectrum of less than substantial harm, albeit acknowledging that some harm would be occasioned. The Council on the other hand would put the harm more to the middle of the range that would be less than substantial and contend there are a number of areas where the perception would be significant, that the landscaping may reduce the effect over time, but not remove it, that the noise, activity and illumination associated with a suburban housing estate would further add to that impact and that the effect of changing that land from open rural land to suburban housing would fundamentally alter the setting and obliterate some of the functional and associative links with the adjoining land, albeit different degrees of weight were ascribed to the various elements of harm.

41. There is no dispute that the site would result in the introduction of housing on the area of land adjacent and bordering the farmstead and main farmhouse. This would bring the settlement of Titchfield up to the cluster of buildings and in effect subsume that once separate element into the broader extent of the settlement. This would reduce the connection of the existing farmstead and listed buildings to the rural hinterland and obscure the separation from the nearby settlement. The character of that change would be noticeable and harmful. It would be perceived when travelling along Posbrook Lane when leaving or entering the village and would be readily appreciated from Bellfield and the adjacent existing settlement edge. There are also public footpaths running through the land. These would be both static and kinetic views when moving along and between the various views. This would be a significant and fundamental change.
42. When viewed from the south, along Posbrook Lane and the public footpaths, travelling towards the farmstead and Titchfield the size and scale of the barn are fully appreciated, there are views available of the manorial farmhouse within these views and together the site is recognisable as a distinct farmstead. Whilst the urban edge of Titchfield is also visible it is appreciated that there is a degree of separation. The proposed development would intrude into these views and in the short to medium term would be readily distinguishable as suburban housing. In the longer-term landscaping may reduce this negative effect by the introduction of a woodland feature at its edge, which the appellant argues is reflective of the historic landscape pattern in the area. However, this would introduce a sense of enclosure around the farmstead and listed buildings that would detach them from the rural hinterland and reduce that historic functional connection with the adjoining open land. Whilst there is evidence of small wooded areas in the historic mapping these were freestanding isolated features and not so closely related to areas of built development. The point of the historic pattern in the area is the farmstead with open land around that was once farmed by the manorial farm and which would not have included such features in such proximity to the main farmstead.
43. There would also be views of the relationship between the farmhouse and the proposed development in views on the public paths to the east. Again, these would be significant and harmful in the short to medium term. There may be some reduction in that harm as landscaping matures but even with dense planting and the softening of the existing urban edge it will be an undeniable

fact that suburban development has been undertaken and that there is no separation between the settlement of Titchfield and the historic farmstead including the listed buildings.

44. For the reasons given above I conclude that there would be harm to the setting of the listed buildings and historic farmstead. I would characterise that harm as less than substantial as this would not obliterate the significance of these historic assets. The proposal would however have an adverse and harmful effect on the setting of these assets which would affect their significance given the contribution that the setting makes to that significance. The urbanisation of the remaining area that separates the farmstead and listed buildings from the settlement is significant and whilst the rural hinterland remains to the south and west the dislocation from the existing built up area is an important and fundamental component of that setting that would be lost as a result of the development. The effect is therefore significant and would not in my view be at the lower end of the less than substantial scale as contended by the appellant but more in line with that suggested by the Council. The proposal would therefore conflict with development plan policy DSP5 which seeks the protection and enhancement of heritage assets and is consistent with national policy.
45. These are two Grade II\* listed buildings and the Framework advises that great weight should be given to a designated heritage asset's conservation, any harm should require clear and convincing justification and assets should be conserved in a manner appropriate to their significance. I also have regard to my statutory duty in respect of listed buildings and their setting. The courts have also held that any harm to a listed building or its setting is to be given considerable importance and weight. These matters are reflected in my planning balance below, which includes the Framework's 196 balance.

*Best and Most Versatile Agricultural Land*

46. The appellant undertook a survey of agricultural land and this assessment is provided in appendix SB3 of Mr Brown's proof. This identifies the limited amount of Grade 3a land (4.1 Ha) that would be affected by the development and sets this in the context of Fareham. In my view this does not trigger the sequential test in the Framework footnote 53 as significant development.
47. It is accepted that whilst there is a loss of BMVAL and that this is a negative to be weighed against the scheme it would not of itself amount to such that would justify the dismissal of the appeal. This is a point that was not refuted by the Council who accepted that it may not justify dismissal but should be weighed as a negative factor in the overall balance against the development.
48. I have no substantive evidence to depart from those views and the approach adopted is consistent with that of a colleague in an appeal at Cranleigh Road (APP/A1720/W/16/3156344).
49. The appellant's report concluded that given the grade of land, the small scale and the overall comparative effect on such land in Fareham, whilst it is a negative, it should be afforded no more than limited weight. I concur with that assessment for the views given and therefore ascribe this loss limited weight in my overall planning balance.

## **Other Matters**

50. The Council and appellant agree that the Council cannot demonstrate a 5 year housing land supply. Time was spent at the Inquiry considering the extent of the shortfall based on, amongst other matters, the correct buffer and the correct household projection base date to use. The publication of the Housing Delivery Test results confirmed that Fareham is a 5% buffer Authority. The government also confirmed that it is the 2014 based household projections that should be used as the basis for calculation of the five-year requirement under the standard method. On this basis both parties agree that the minimum five-year requirement would be 2,856 in the period 2018 to 2023.
51. The updated position of the parties is thus a 3.08 years supply taking the appellants position or a 4.36 years supply if the Council's position were to be adopted. I have been provided with further supply evidence in relation to the Old Street Inquiry which calls into question some of the supply side dwellings included in the Council's figures which were permitted since April 2018. Excluding these the appellant suggests the Council's figures would drop to 4.08 years supply.
52. Whichever figures are adopted it is clear that the Council cannot identify a five-year supply of available housing land and that the shortfall is significant. The provision of additional housing in an area where there is a significant housing shortfall in my view translates into a significant positive benefit for the scheme in terms of the overall planning balance.
53. The appeal site is located where there is potential for a significant effect on a number of European designated wildlife sites which comprise Special Areas of Conservation (SACs), Special Protection Areas (SPAs) potential Special Protection Areas (pSPAs) and Ramsar sites. The proposal has been subject to Habitats Regulation Assessment and a shadow Appropriate Assessment process by the appellant. Given the requirement for further publication of environmental information in association with the Environmental Statement consultation was undertaken with Natural England as the Nature Conservation Body to ensure there was no further procedural or administrative delay at the end of the process. However, given the conclusion of my assessment of the effect of the development on the wider landscape and the designated heritage assets I am not minded to allow the appeal. On this basis an Appropriate Assessment does not need to be carried out, as it is only in circumstances where I am minded to grant consent that such an assessment is required to be undertaken. Moreover, in the interim the Framework, paragraph 177 has been amended to advise that it is not the requirement to conduct Appropriate Assessment but the conclusion that following that assessment there is an identified likely significant effect on a habitats site where the presumption in favour of sustainable development does not apply. In these circumstances this matter does not therefore affect the approach to my planning balance.

## **Benefits of the Scheme**

54. As noted above the provision of housing in an Authority area where the Council cannot identify a five-year housing supply is a significant benefit of the scheme. The Statement of Common Ground signed by the parties makes it clear that there is a significant need for affordable housing. The provision of 40% of the total number of units provided as affordable housing, secured

through the planning obligation, is therefore also a significant positive benefit of the scheme.

55. The appellant contends that there would be between 360 and 465 direct, indirect and induced jobs created by construction. It is further contended that there would be an on-going £4.1m gross expenditure per annum from future residents. It is further contended that the landscaping and ecological mitigation would improve the appearance of the harsh urban edge currently created by Bellfield. These are benefits that accrue from this development and are therefore reasonable to add as positive contributions in the planning balance. They are of a scale which reflects the scale of the development.
56. For these reasons the social benefits from additional housing and affordable housing are of significant positive weight, the economic benefits are of moderate positive weight, and the environmental benefits are of limited positive weight.

### **Planning Obligation**

57. A completed Unilateral Undertaking (UU) dated 8 November was submitted to the Inquiry before the conclusion of it sitting. The UU secures matters related to transport including the site access, travel plan and construction traffic management as well as a contribution towards sustainable transport. The UU also secures public open space provisions, including contributions; environmental and habitat obligations, including commuted maintenance and disturbance contributions and the transfer of a bird conservation area; an education contribution and obligations to protect or provide on site routes for the public. These are in effect mitigation measures or matters directly related to the development and do not amount to positive benefits.
58. The appeal is to be dismissed on other substantive issues and whilst an obligation has been submitted, it is not necessary for me to look at it in detail, given that the proposal is unacceptable for other reasons, except insofar as it addresses affordable housing.
59. In respect of affordable housing the UU secures 40% of the housing as affordable units with the mix, tenure and location controlled by the undertaking. I have already identified this as a benefit of the scheme which will be taken into account in the planning balance.

### **Planning balance**

60. I have concluded that the proposed development would result in material harm to the significance of two Grade II\* listed buildings through development in the setting of those buildings. This harm is in my view less than substantial harm in the terms of the Framework a position also adopted by both main parties. Paragraph 196 of the Framework advises in such circumstances that this should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.
61. I have identified the public benefits of the scheme above and these include the provision of additional housing in an authority where there is not a five year supply of housing land and the provision of affordable housing in an area where there is a significant need. I give these matters significant weight. Added to these would be the additional jobs and expenditure in the locality arising from construction activity and following completion of the development. Given the

scale of development these would not amount to small figures and I have ascribed this moderate weight. The proposed landscaping and biodiversity enhancements are a balance and required in the context of also providing a degree of mitigation I therefore only ascribe these limited positive weight.

62. The Framework makes it clear that when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Furthermore it advises that any harm to the significance of a designated heritage asset should require clear and convincing justification. There is a statutory duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. The courts have interpreted this to mean that considerable importance and weight must be given to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise in planning decisions.
63. Heritage assets are an irreplaceable resource and they should be conserved in a manner appropriate to their significance. The Farm House and Barn at Great Posbrook are both Grade II\* and therefore are assets of the highest significance. The development of a substantial housing estate in the rural setting of these listed buildings, and farmstead of which they form part, would materially alter the relationship of the listed buildings and farmstead to the nearby village and wider rural hinterland. This would merge the existing distinct and separated grouping of buildings with the expanding village removing that degree of separation and obscuring the historic relationship with the village and wider countryside. I would not characterise this less than substantial harm as of such limited effect as 'at the lower end' within that spectrum as suggested by the appellant. Indeed, the setting contributes to the significance of these listed buildings and their appreciation from both distinct view points and kinetic views. The negative effect would have a measurable and noticeable effect on the existing physical relationships of development in the area and thereby the understanding of the historic development of those over time. The understanding of the high status nature of the house and barn, and their significance, is derived in part from an appreciation of the separation from the village, their setting within the wider agricultural and rural hinterland as well as their size, scale, architectural quality and relationship of the buildings to each other and the surrounding development.
64. On the basis of the above I conclude that the less than substantial harm I have identified, and to which I give considerable importance and weight, is not outweighed by the significant public benefits of the scheme. On this basis I conclude that the scheme should be resisted. As the scheme fails the paragraph 196 test this would disengage the paragraph 11 d tilted balance that would otherwise have been in play given the lack of a five-year supply of housing land.
65. The scheme would be subject to the requirement to carry out an Appropriate Assessment under the Habitats Regulations if I were minded to allow the appeal. At the time of submission of the appeal Paragraph 177 of the Framework required that the presumption in favour of sustainable development, in paragraph 11, would not apply where an Appropriate Assessment was required to be carried out. The latest iteration of the Framework has amended paragraph 177 to only disengage the presumption in favour of sustainable development where the development is likely to have a

significant effect on a habitats site. If an Appropriate Assessment has concluded the development would not adversely affect the integrity of the habitats site the presumption would not be disengaged. However, given my conclusions in respect of the impact on heritage assets and the other harms I have identified I am not minded to allow the appeal and therefore I do not need to carry out an Appropriate Assessment.

66. Whilst the presumption in favour of sustainable development is not disengaged by virtue of paragraph 177 of the Framework, paragraph 11 d, the so called 'tilted balance', is disengaged by virtue of my conclusions in relation to the effect on the heritage assets and the application of 11 d i. The proposal therefore is to be considered in the context of a straight balance. Section 38(6) requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposal would result in material harm to the character and appearance of the area, which is a valued landscape, to the setting of two Grade II\* listed buildings and a minor adverse effect on best and most versatile agricultural land in the area. On this basis the proposal would conflict with policy CS14 in the LPP1 and DSP5, DSP6 and DSP40 in the LPP2.
67. The Authority cannot demonstrate a 5 year supply of housing land and policies which restrict housing development through such matters as settlement boundaries and gaps are out of date. They do not provide for the necessary housing to make provision for adequate housing in the area. However, those policies, which include CS14, CS22 and DSP6 do seek to protect the countryside and fulfil a purpose that is consistent with the Framework. The Council is seeking to address the shortfall and is making positive steps in that regard albeit there is dispute as to how successful that is. Nevertheless matters are moving forward and although there is still an outstanding shortfall, which even if I accept is as great as suggested by the appellant, is improving on historic figures and there appears to be greater opportunities for this situation to be improved further. I accept that Welbourne may well not be moving at the pace that has previously been suggested and not as quickly as the Council would suggest, but it is still moving forward and with a significant complex development of this nature matters will take time but once milestones are reached momentum is likely to quicken. Of particular relevance here is the determination of the extant application, which remains undetermined but continues to move forward. On the basis of the information before me the determination of this would be in the spring or middle of this year. Given the above I do not afford these particular policies the full weight of the development plan but I still accept that they have significant weight and the conflict with those policies that I have identified above still attracts significant weight in my planning balance.
68. I note that policy DSP5 reiterates national policy and reflects the statutory duty and is therefore accorded full weight and conflict with it, as I have found in this regard, is afforded substantial weight. 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. In the context of the harms I have identified which relate to landscape, heritage assets and best and most versatile agricultural land these result in conflicts with specific criteria in policy DSP40 for the reasons given above in respect of those matters and therefore there is conflict with the policy. These

are two significant policies where weight has not been reduced and the proposal when considered in the round is not in accordance with the development plan taken as a whole.

69. The ecological provisions payments and additional bird sanctuary are primarily mitigation requirements resultant from the proposed development and its likely potential effects and do not therefore substantively add a positive contribution to the overall balance.
70. The impact on the significance of the Grade II\* listed buildings is not outweighed by the public benefits of the scheme and therefore the additional harms related to landscape and BMVAL only add further to the weight against the proposal. The advice in the Framework supports the conclusions to resist the proposal. There are therefore no material considerations that indicate that a decision other than in accordance with the development plan would be appropriate.

**Overall conclusion**

71. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR



DOCUMENTS SUBMITTED AT INQUIRY BY APPELLANT

- APP1 Housing Land Supply Statement of Common Ground.
- APP2 Press Release dated 18 October 2018 from Fareham Borough Council.
- APP3 Appeal Decision letter APP/W3520/W/18/3194926.
- APP4 Habitats Regulations Assessment Screening & Shadow Appropriate Assessment prepared by CSA Environmental.
- APP5 Unilateral Undertaking dated 8 November 2018.
- APP6 Bundle of three Committee reports (P/17/1317/OA, P/18/0235/FP and P/18/0484/FP) confirming the Council's approach to Policy DSP40.
- APP7 Additional suggested conditions.
- APP8 Letter from Hampshire and Isle of Wight Wildlife Trust confirming their agreement to take on the land secured as the Bird Conservation Area in the Unilateral Undertaking.
- APP9 Closing submissions on behalf of the appellant.

DOCUMENTS SUBMITTED AT INQUIRY BY LOCAL PLANNING AUTHORITY

- LPA1 List of Appearances on behalf of the Council
- LPA2 Updated extract from 'The Buildings of England Hampshire: South', appendix 14b to Ms Markham's proof of evidence.
- LPA3 Conservation Area Appraisal and Management Strategy: Titchfield Abbey, Fareham Borough Council adopted sept 2013 – substitution for Core Document F11.
- LPA4 Appeal Decision letter APP/W1715/W/17/3173253.
- LPA5 Copy of Policies 1CO and 2CO from the Eastleigh Borough Local Plan.
- LPA6 Announcement from the Leader of Fareham Borough Council dated 5 November 2018.
- LPA7 S106 Obligations Justification Statement.
- LPA8 Opening submissions on behalf of the Council.
- LPA9 List of documents to be referred to during Evidence in Chief of Philip Brshaw.
- LPA10 List of documents to be referred to during Evidence in Chief of Lucy Markham.
- LPA11 Draft schedule of conditions.
- LPA12 e-mail from Strategic Development Officer Children's Services Department Hampshire County Council dated 8 November 2018.
- LPA13 Plan of route and points from which to view the site during the appeal site visit.
- LPA14 Closing submissions on behalf of the appellant.

DOCUMENTS SUBMITTED AT INQUIRY BY TITCHFIELD NEIGHBOURHOOD FORUM

- TNF1 Opening statement on behalf of Titchfield neighbourhood Forum
- TNF2 Email exchange with appellant regarding drainage dated 6 November including various attachments
- TNF3 List of documents referred to in Evidence in Chief of Mr Phelan
- TNF4 Closing Statement on behalf of Titchfeild neighbourhood Forum

DOCUMENTS SUBMITTED AT INQUIRY BY THIRD PARTIES

INQ1 Speaking note from Mr Girdler  
INQ2 Letter read out by Mr Marshal on behalf of The Fareham Society  
INQ3 Speaking note from Mr Hutcinson

DOCUMENTS SUBMITTED AFTER INQUIRY

PID1 Additional Environmental Information submitted by appellant under cover of letter dated 14 December 2018.  
PID2 Copy of Press notice of publication of Additional Environmental Information.  
PID3 Comments on Additional Environmental Information by Titchfield neighbourhood Forum.  
PID4 Comments on Additional Environmental Information by Fareham Borough Council.  
PID5 'Old Street' Appeal decision APP/A1720/W/18/3200409 submitted by Fareham Borough Council  
PID6 Fareham Borough Council comments on 'Old Street' decision.  
PID7 Appellant's comments on 'Old Street' decision.  
PID8 Natural England's (NE) consultation response on shadow Habitats Regulation Assessment as Statutory nature Conservation Body.  
PID9 Appellant's response to NE's consultation response (PID8) including an updated shadow Habitats Regulation Assessment.  
PID10 Titchfield neighbourhood Forum's response to NE's consultation response (PID8)  
PID11 Titchfield Neighbourhood Forum's comments on the Housing Delivery Test (HDT) results and the changes to the National Planning Policy Framework (the Framework).  
PID12 Fareham Borough Council's comments on the HDT results and the changes to the Framework.  
PID13 Appellant's comments on the HDT results and the changes to the Framework.  
PID14 Titchfield Neighbourhood Forum's final comments on HDT and Framework  
PID15 Appellant's final comments on HDT and Framework.

END



## Appeal Decision

Inquiry Held on 24 to 26 September 2019

Site visits made on 23, 25 and 26 September 2019

**by Grahame Gould BA MPhil MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 5 November 2019**

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**Appeal Ref: APP/A1720/W/19/3230015**

**Land to the east of Downend Road Portchester**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Miller Homes against the decision of Fareham Borough Council.
  - The application Ref P/18/0005/OA, dated 2 January 2018, was refused by notice dated 26 April 2019.
  - The development proposed is described as 'Outline planning application with all matters reserved (except the means of access) for residential development, demolition of existing agricultural buildings and the construction of new buildings providing up to 350 dwellings; the creation of new vehicular access with footways and cycleways; provision of landscaped communal amenity space, including children's play space; creation of public open space; together with associated highways, landscaping, drainage and utilities'.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Miller Homes against Fareham Borough Council. That application is the subject of a separate Decision that will follow the appeal decision.

### Preliminary Matters

3. The Inquiry sat for three days between 24 to 26 September 2019. I made what the Planning Inspectorate refers to as an 'access required' visit to the site on 25 September when I was granted access to enter and view the site, rather than being accompanied by representatives for the appellant and the Council. I also made unaccompanied visits to the area within the vicinity of the appeal site on 23 and 26 September.
4. While the Inquiry finished sitting on 26 September, I adjourned it, as opposed to closing it to allow for the submission of: a certified copy of an executed Section 106 agreement (S106); the appellant's and the Council's closing submission in writing; some documents referred to by the parties in evidence (inquiry documents [IDs]); a final version of the inquiry position statement; and the appellant's written application for costs and the Council's response to that application. The Inquiry was closed in writing on 21 October 2019.

5. The S106 was received by the Planning Inspectorate on 3 October 2019 and it contains planning obligations concerning:
- the provision of 40% affordable housing within the development;
  - the implementation of improvements to the Cams bridge;
  - the undertaking of off-site highway works for alterations at the railway bridge in Downend Road and on the A27;
  - the payment of contributions for various off-site highway and transportation improvements and the implementation of an occupiers travel plan;
  - the provision of and the payment of maintenance contributions for public open and play space;
  - the payment of a contribution to mitigate the development's effects on off-site designated habitats; and
  - the payment of a contribution for school facilities in the area.

### **Main Issues**

6. The main issues are:
- whether the development would make adequate provision for pedestrian access via Downend Road and the effects of providing pedestrian access on the operation of Downend Road;
  - whether there would be accessibility to local services and facilities for the occupiers of the development by a range of modes of transport; and
  - the effects of the development on the integrity of the Portsmouth Harbour Special Protection Area and Ramsar Site, the Solent and Southampton Special Protection Area and Ramsar site and the Solent and Dorset Coastal Potential Special Protection Area (the designated habitats).

### **Reasons**

#### *Pedestrian access via Downend Road and effects on the operation of Downend Road*

7. Having regard to the wording of part a) of the reason for refusal, ie pedestrian use of Downend Road and any subsequent implications for the 'safety' of and 'convenience' of users of this road, and the evidence put to me, there are various matters that come within the scope of the consideration of this main issue. Those matters, which I consider below in turn, being: the pedestrian routes that would be available to occupiers of the development; the pedestrian demand (movements) and the distribution of those movements amongst the pedestrian routes; and the options for and effects of altering the railway bridge in Downend Road to accommodate the pedestrian movements arising from the development.
8. Inevitably there is some overlap between the matters of pedestrian movements and their distribution to be consider under this issue and the

wider accessibility to services and facilities that concerns the second main issue that I have identified.

Proposed pedestrian routes

9. The development would involve the construction of 350 dwellings to the north of a railway line, just beyond part of Portchester's established residential area. The development would have three pedestrian routes to and from it and they would be via: Downend Road, the westernmost of the routes (route A); Cams bridge, the central route (route B); and Upper Cornaway Lane, the easternmost route (route C).
10. Cams bridge crosses the railway line and currently provides access between the site and a small vehicle repair garage and The Thicket, the latter being a residential street. Separately planning permission has been granted for upgrading works to the Cams bridge to facilitate its use as a pedestrian route for occupiers of the appeal development. On the southern side of Cams bridge there is a tarmacked track leading off The Thicket. With the upgrading of Cams bridge route B would be a pedestrian route of an essentially urban character.
11. Route C would in part be reliant on the use of an unsurfaced, one metre wide and 200 metre or so length of a public right of way (footpath PF117), and Upper Cornaway Lane, a street providing access to the crematorium and some chalet type homes. Given the rural character of FP117 and its current suitability only for recreational use, some widening and surfacing works would be undertaken to it to enable it to be used more easily by residents of the proposed development.
12. Downend Road can be characterised as being a local distributor road<sup>1</sup>, with a two-way, daily flow of the order of 6,800 vehicles per day<sup>2</sup>. Pedestrians using route A and travelling to and from destinations south of the railway line would have to cross the railway bridge in Downend Road, following some alterations to the bridge being made, which are referred to in more detail below. That railway bridge has variously been described as providing a north/south or east/west crossing of the railway line and I shall hereafter only refer to it as an east/west crossing of the railway line and to drivers making eastbound or westbound crossings of the bridge. On the railway bridge and westbound of it, as far as the junction with the A27, Downend Road is subject to a 30mph speed limit. Immediately eastbound of the railway bridge the speed limit increases to 40mph.
13. In terms of accessing places of work and education, shopping and leisure facilities, public transport (Portchester railway station and bus stops along Portchester Road [A27]) and other services and facilities etc, it is agreed that some occupiers of the development would walk to and from the previously mentioned destinations. However, there is disagreement about the scale of the pedestrian demand and how it would be distributed amongst the three routes.

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<sup>1</sup> Paragraph 6.24 of Mrs Lamont's PoE

<sup>2</sup> Table 2.1 within Mr Wall's proof of evidence and paragraph 41 of Mr Litton's closing submissions for the appellant (ID21)

The pedestrian demand (movements) and the distribution of those movements

14. The appellant's most up to date estimate of the total daily pedestrian demand generated by the development would be nearly 700 movements per day, inclusive of walking trips to access buses and trains, 26.6% or so of all daily trips arising from the development<sup>3</sup>. By contrast the Council estimates that the number of daily single mode walking trips would be of the order of 284 trips, ie origin to destination trips excluding the use of buses or trains (CD10A). The parties agree for the purposes of estimating the development's pedestrian demand that data from the national travel survey 2018 (NTS2018) should be used to establish all trip generation, mode share and journey purpose. It is further agreed that the 2011 Census data should be used to determine the development's population.
15. However, there is disagreement between the appellant's and the Council's transportation witnesses<sup>4</sup> as to what flexibility should be used in applying the acceptable walking distance guidance stated by the Chartered Institution of Highways and Transportation (CIHT) in its guidelines for the 'Provision for journeys on foot' (CIHT2000 [CD25]). There is also a difference of opinion as to whether the mode share for walking to work recorded by the Census, ie 52% of the national level, should be used as a proxy when considering the propensity for all walking trips arising from the development. The consequence of those disagreements being whether local places of work, schools, shopping facilities etc would or would not be within walking range of the development, having regard to the alternatives offered by the three routes.
16. Mr Wall for the appellant is of the view that the suggested acceptable walking distances set out in Table 3.2 of CIHT2000 are dated and are being too rigidly applied by Mrs Lamont for the Council. The guidelines set out Table 3.2 are:

	Town centres (metres)	Commuting/school and sightseeing (metres)	Elsewhere (metres)
Desirable	200	500	400
Acceptable	400	1,000	800
Preferred Maximum	800	2,000	1,200

17. While it has been suggested that the acceptable walking distance guidelines stated in CIHT2000 are dated, given that they are nearly 20 years old, that concern does not seem to be borne out by the information contained within Table NTS0303 contained within NTS2018<sup>5</sup>. That is because between 2002 and 2018 the average walking trip length has remained constant at 0.7 miles (1.12 Km), while walking trips over a mile (1.6 Km) have consistently been of an average length of around 1.4 miles (2.25 km). Those national survey results suggest that individuals' attitudes towards walking trip

<sup>3</sup> Page 2 of CD10A and Paragraph 2.3.9b of Mr Wall's PoE

<sup>4</sup> Mr Wall for the appellant and Mrs Lamont for the Council

<sup>5</sup> Page 4 Appendix 1 of Mrs Lamont's PoE

lengths have not altered appreciably and that there is no particular issue with the currency of the guidance contained in Table 3.2 of CIHT2000.

18. In any event were the guidelines stated in CIHT2000 thought to be out of date, then I would have expected the CIHT to have revised them, either by issuing an amended version of CIHT2000 or publishing an entirely new document. Neither of those courses of action have been initiated by CIHT, with the publication of its 'Planning for Walking' guidance in 2015 (CD27 – CIHT2015) appearing to have provided an obvious opportunity for replacement acceptable walking distance guidelines to have been introduced. Instead CIHT2015 makes cross references to CIHT2000 in sections 4 and 6, which I consider to be a strong indication that CIHT was of the view that irrespective of the age of its acceptable walking guidelines, they continued to have currency. Mr Wall in giving his oral evidence stated that he was unaware of the CIHT undertaking any current review of CIHT2000.
19. Regardless of a walking trip's purpose the appellant contends that an upper ceiling distance of 2.4 Km (1.5miles) should be used. However, setting such a distance is inconsistent with what is stated in CIHT2000 and the average walking trip lengths reported in the NTS2018 and I therefore consider it should be treated with some caution. The wider disagreement about the overall number of pedestrian movements that would be generated is something I shall return to in providing my reasoning for the second main issue. However, in the context of the consideration of the utility of route A, I consider that the walking trips of most significance would be those to and from Cams Hill Secondary School (the school) and the Cams Hall employment site (CHes). That is because the school and the CHes would or would very nearly meet the 2,000 metre preferred maximum distance guideline for walking journeys for schools and commuting stated in CIHT2000.
20. As it is highly unlikely that route C would be used to get to or from either the school or the CHes, there is no need for me to make any further reference to it in considering this main issue.
21. The parties are now agreed that the development would generate 35 or 36 pedestrian crossings of the Downend Road bridge per day, an increase of between 83% and 86% on the present situation<sup>6</sup>. Of the new crossings there is agreement that 24 would be for the purpose of travelling to and from the school. However, unlike the Council, the appellant contends that no use of route A would be made by commuters walking to or from a place of work<sup>7</sup>.
22. There is some disagreement as to whether the CHes would be 2,000 or 2,100 metres from the development. I consider that a 100 metre (5%) difference would not act as a significant deterrent for pedestrians using route A. That is because the time to walk an extra 100 metres would not be great and for a walker using either routes A or B and it would probably be necessary to time the duration of the alternative walking trips to be aware of any meaningful difference between them. Having walked routes A and B, and presuming that a safe pedestrian crossing for the Downend Road railway bridge would be available, I consider that qualitatively there would be very little to differentiate route A from B. I also consider there would be potential

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<sup>6</sup> Page 5 of CD10A

<sup>7</sup> In the zero entry against commuting/business trips in the upper table and supporting text on page 3 of CD10A and in Tables 10 and 11 included in Appendix C to Mr Wall's PoE

for commuters walking between the development and the CHes to vary their routes, to avoid monotony, and to use either route A or B. I am therefore not persuaded that route B would automatically be favoured ahead of route A by those walking to and from the CHes.

23. So, unlike the appellant, I consider it incorrect to discount commuters from walking to or from CHes via route A. I therefore consider that there would be potential for more pedestrian use of Downend Road railway bridge than has been allowed for by the appellant. I also consider that as there is access to the circular countryside public footpath route just beyond the railway bridge that there would be potential for additional recreational walkers, originating from the existing built up area, to be drawn to Downend Road resulting in some additional crossings of the bridge. That is because the provision of enhanced pedestrian facilities would make it safer to cross the bridge and the bridge's existing condition may well be acting as a detractor for recreational walkers.

The five options considered at the application stage for altering the Downend Road railway bridge

24. To accommodate additional pedestrian crossings of the railway bridge in Downend Road there is no dispute that alterations would need to be made to this bridge. That is because the existing bridge only provides a very rudimentary refuge for pedestrians, in the form of a very narrow margin, tantamount to a 'virtual footway', that comprises a strip of tarmac demarcated by a white painted line.
25. To address the additional demand for pedestrian crossings of the bridge the appellant when the appealed application was originally submitted put forward three options for alterations (options 1 to 3). Option 1 would involve the introduction of a formalised virtual footway and has been discounted by Hampshire County Council (HCC). Option 2 would involve the provision of a 1.2 metre wide traditional (raised) footway, with a carriageway width of around 4.8 metres. Option 3 would involve the provision of a 2.0 metre wide footway and a reduction in the width of the carriageway to form a single lane of 3.5 metres and would involve the introduction of a shuttle working arrangement, with the signed priority being in favour of the eastbound stream of traffic. HCC in offering its advice to the Council<sup>8</sup> expressed no preference for either options 2 or 3, with it stating that the final decision on which option should be pursued being deferred until a post planning permission public consultation exercise had been completed.
26. Following the decision of the Council's planning committee to defer the determination of the appealed application in order to enable further consideration to be given to the alteration of the railway bridge, two further options were put forward by the appellant. The first of those, option 4, would be similar to option 3, albeit than in substitution for signed priority vehicles would be controlled by traffic signals. HCC are reported as raising no in principle concern with option 4, albeit it indicated that this option would entail greater driver delay, including unnecessarily during off peak periods, and a maintenance liability, such that options 2 and 3 remained preferable to the highway authority<sup>9</sup>.

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<sup>8</sup> Letter of 29 August 2018 (contained within CD2)

<sup>9</sup> Paragraph 3.2.6 in the i-Transport Technical Note of 28 February 2019 and entitled 'Downend Road Railway Bridge – Review of Pedestrian Options' (CD29)

27. Option 5 would involve no footway provision, with the carriageway available to vehicles crossing the bridge travelling in opposite directions at the same time being 5.0 metres. There would also be 300mm wide margins to protect the parapets on each side of the bridge<sup>10</sup>. Additionally, traffic signals would be installed so that when pedestrians sought to make a bridge crossing they would initiate an all red phase for both eastbound and westbound drivers, making the bridge a pedestrian only area for so long as pedestrians were crossing it. HCC are reported as considering option 5 to be a unique and unsafe means for controlling shuttle working at the bridge and rejected it (CD2<sup>11</sup>). However, HCC's advice to the Council concerning Option 5 appears to have been on the basis that it would involve shuttle working, as opposed to two way working. In this regard HCC is reported as commenting:

*'As such drivers unfamiliar with the site may not expect opposing vehicles to be on the bridge at the same time (both directions on a green signal). This situation is exacerbated by the carriageway width on the bridge which in this controlled situation would encourage drivers to take a more central position in the carriageway. Consequently vehicles may meet each other on the bridge'. (Appendix 2 of committee report of 24 April 2019 [CD2])*

However, HCC's comments regarding option 5 appear to have been made on an erroneous basis, with it having put forward as an alternative to shuttle working. It is therefore unclear what HCC's views on option 5 would have been had it not been treated as being an 'unconventional arrangement'<sup>12</sup>, given its apparent misunderstanding about what this option would entail. It would also appear that the appellant did nothing to bring this misunderstanding to HCC's attention.

28. The Council's determination of the planning application was therefore based on options 2 and 3 being for its consideration and it contends that option 2 would be unsafe for pedestrians, while option 3 scheme would unacceptably affect the safety and convenience of road users. I now turn to the detailed consideration of options 2 and 3.

#### Option 2

29. The railway bridge provides poor facilities for pedestrians crossing it. I recognise that in general terms the provision of a 1.2 metre wide footway on the Downend Road bridge under option 2 would represent an improvement in safety terms compared with the prevailing situation, however, I consider that cannot reasonably be said of the post development situation. That is because the development would be a significant new generator of vehicles crossing the bridge, with the parties agreeing that the development would give rise to a 22% increase in traffic flows on the bridge<sup>13</sup>. Those extra bridge crossings is something that needs to be accounted for when considering whether option 2 would provide a safe environment for the existing and prospective pedestrian users of the bridge.

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<sup>10</sup> As clearly depicted in the cross section contained in Image 3.2 and drawing ITB12212-GA contained in CD29

<sup>11</sup> The summary of HCC's comments to the Council included as Appendix 2 of the Council's committee report of 24 April 2019

<sup>12</sup> Paragraph 3.3.6 in CD29

<sup>13</sup> Page 5 of CD10A

30. I am of the view that a 1.2 metre wide footway under option 2 would not provide a safe bridge crossing facility for pedestrians, having regard to both the increases in vehicular and pedestrian crossings of the bridge, with the development being a new origin/destination for both categories of travellers, particularly during the peak hours for the making of commuting trips and/or school journeys. It is also likely that the pedestrians using the bridge would be likely to be a mixture of adults and school aged children. Given that the demand for additional bridge crossings would largely come from commuters and school children, I consider that activity would be more likely to coincide with AM and PM peaks and would not be evenly spread throughout the day. In saying that I recognise that working hours can be staggered and out of teaching hours' activities occur at schools, but those activities would only give rise to some walking trips for occupiers of the development outside the core peak hours.
31. Having regard to the guidance on footway widths stated in the Department for Transport LTN1/04 'Policy, Planning and Design for Walking and Cycling'<sup>14</sup> and Manual for Streets (MfS - CD23), a footway of 1.2 metres width would be considerably narrower than the generally preferred minimum 2.0 metres referred to in paragraph 6.3.22 of MfS. While the guidance is not expressed in absolute terms the footway to be provided as part of option 2 would potentially be used by a variety of pedestrians, ie adults, children, with or without any impairment. However, a footway of 1.2 metres in width would only just be wide enough for an adult and a child to walk side by side, but would not accommodate two adults with a push chair walking side by side in the same direction or an adult and a wheelchair user side by side, based on the details provided in figure 6.8 of MfS.
32. Regard also needs to be paid to pedestrians travelling in opposite directions wishing to cross the bridge at the same time. In that regard I recognise that as far as pedestrians travelling from or to the development in the peak hours are concerned the bulk of those users would be travelling in the same direction and that this demand for the footway's use would not generate opposing movements. However, there are already users of the bridge and many of them will be making trips across the bridge in the opposite direction to pedestrians leaving or returning to the development. There would therefore be potential for opposing crossings of the bridge to be made at the same time, creating a conflict situation. I consider it cannot be assumed that when directional conflicts arose that one party would give way to the other and with such a narrow footway that would make the use of the carriageway a possibility, bringing pedestrians into conflict with vehicles.
33. Under the prevailing situation, I observed cars frequently encroaching beyond the centre line on the bridge whether there were or were not any pedestrians on the bridge. My seeing cars crossing over the centre line irrespective of whether pedestrians are crossing the bridge is also consistent with the screenshot images included in the appellant's evidence, for example those in appendix A of the appellant's Technical Note of 28 February 2019. All of which is also consistent with the advisory road signs on either side of the bridge warning of oncoming vehicles being in the middle of the road.

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<sup>14</sup> Appendix X to Mr Wall's PoE

34. I therefore find difficult to envisage how that driver behaviour would not continue to be replicated with an increased number of vehicular crossings of the bridge, following a reduction in the carriageway width for vehicles under option 2. That in turn could result in eastbound vehicles needing to mount the footway or their nearside wing mirrors encroaching into the space above the footway. So, under a scenario of vehicles crossing in opposing directions at the same time as pedestrians were also making use of the bridge there would be the potential for the safety of pedestrians to be unacceptably prejudiced.
35. The appellant has sought to justify the provision of a 1.2 metre wide footway, on the basis of having undertaken a 'Fruin' assessment, to judge the level of service this footway would afford its users. However, the extract of the paper written by Mr Fruin submitted at the inquiry (ID5<sup>15</sup>) refers to 'channel's (footways) upwards of 1.8 metres (6 feet) in width having been assessed. I therefore consider that the Fruin methodology has very limited applicability to a footway under option 2 that would be two thirds of the width of the footway referred to in ID5. I therefore find this aspect of the appellant's case does not justify the provision of a 1.2 metre wide footway.
36. While other instances of narrow footways at bridges/archways in Hampshire have been drawn to my attention in evidence<sup>16</sup>. However, those examples do not appear to be directly comparable with the appeal proposals and in any event it is the acceptability of otherwise of the latter that I need to consider.
37. I also find it surprising that HCC considers a 1.2 metre wide footway would be appropriate on a road subject to around 6,750 daily vehicle movements, when the appellant is intending the main and secondary estate roads within the development would have 2.0 metre footways<sup>17</sup>.
38. I therefore consider that option 2 should be discounted as an appropriate alteration to the Downend Road railway bridge for safely accommodating the additional pedestrian use of the bridge that would arise from the development.

### Option 3

39. The appellant's modelling of the effect of option 3's operation traffic flows is heavily reliant on the use of the 'ARCADY' software, that software normally being used to assess the operation of roundabouts. In this instance ARCADY has been set up with a 'dummy arm' as a work around to simulate the operation of eastbound priority shuttle working at the railway bridge. Using ARCADY, the appellant has estimated that in the AM peak hour, the average queue length would be 3.3 vehicles amounting to a delay of 23 seconds<sup>18</sup>.
40. I have never previously come across ARCADY being used for any purpose other than modelling the operation of roundabouts. I therefore find it surprising that HCC, in providing its comments to the Council (included in CD2), did not question ARCADY's use in assessing the operation of shuttle working at a bridge. I consider it unsurprising that the Transport Research Laboratory (TRL), as the developers/product owner of ARCADY, has cast significant doubt on the suitability of its model for assessing a scenario such

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<sup>15</sup> Designing for pedestrians a level of service concept

<sup>16</sup> Appendix X of Mr Wall's PoE and ID11

<sup>17</sup> Paragraph 2.4.2 of the Transport Assessment (CD15)

<sup>18</sup> Page 9 of CD10A

as option 3 because of an issue of dealing with `... the lag times once a vehicle is in the narrowing ...'<sup>19</sup>. So, while HCC appears to have voiced no concerns about ARCADY's suitability, I consider that very little weight should be attached to it for the purposes of assessing the effect of option 3 on the safe and free operation of Downend Road. I also consider it of note that TRL has stated that its PICADY modelling tool, which is designed to model the operation of priority junctions, is also unsuitable for modelling option 3, with TRL referring to its TRANSYT traffic signal software as being more suitable<sup>20</sup>, albeit still something of a work around.

41. In response to the limitations of the appellant's modelling of option 3, the Council has used microsimulation software to assess the operational effects of option 3. That software 'Paramics Discovery Version 22' (PDV22) being a microsimulation model that includes a module, introduced around six months ago<sup>21</sup>, and which has a specific module capable of modelling road narrowings<sup>22</sup>. As a worst case the Council's running of PDV22 predicts that during the AM peak period queues of up to 36 vehicles might extend back from the westbound vehicle give way point and result in westbound traffic being delayed by up to 17 minutes<sup>23</sup>.
42. Given the recent introduction of PDV22 its track record is limited and the appellant has raised concerns about the reliability of PDV22. In that regard it has been argued that the Council's running of PDV22 has not been correctly calibrated for the circumstances of option 3 and that its output results cannot be validated. Mr Wall in cross examination contended that PDV22 appears to have been developed without being informed by driver behaviour. However, producing a model that was incapable of replicating driver behaviour would seem a nonsensical exercise for the product supplier. Given that PDV22 has been developed to assess the operation of a highway under the circumstances of vehicles in one flow giving way to an opposing flow of vehicles at a road narrowing, I consider that very little weight should be attached to the proposition that this software had been developed without regard to driver behaviour.
43. Mr Wall is not a 'modelling expert'<sup>24</sup> and has placed some reliance on the findings of a study undertaken by the TRL for the Department of Transport to support his use of ARCADY and to critique the Council's running of PDV22. The findings of the TRL study were reported in 1982 in a paper entitled 'The control of shuttle working on narrow bridges' (TRL712)<sup>25</sup>. To assist with critiquing the running of PDV22 the appellant has engaged a consultancy specialising in microsimulation modelling, Vectos Microsim Limited (Vectos), and a video file of the model runs Vectos has performed, as well as written advice it has given to the appellant, has been submitted as part of the appellant's evidence<sup>26</sup>. In response to the critique of PDV22 the Council has supplemented its evidence through the submission of a video file for its

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<sup>19</sup> Email from Jim Binning of TRL to Mayer Brown of 23 August 2019, included in Appendix RVL4 appended to Mrs Lamont's rebuttal statement

<sup>20</sup> Email from Jim Binning of TRL to Mayer Brown of 9 August 2019, included in Appendix RVL4 appended to Mrs Lamont's rebuttal statement

<sup>21</sup> Mrs Lamont in during cross examination

<sup>22</sup> Matter of agreement stated on page 8 of CD10A

<sup>23</sup> Mrs Lamont's rebuttal statement

<sup>24</sup> Email of 23 September 2019 to the Planning Inspectorate from Mrs Mulliner on the appellant's behalf

<sup>25</sup> Appendix K to Mr Wall's PoE

<sup>26</sup> Appendix P to Mr Wall's Rebuttal Statement, Note from Vectos of September 2019 entitled 'Paramics modelling - comments on Sysra review and Mayer Brown rebuttal', ID12 and ID15

running of PDV22 and written comments from the software's developer, Systra<sup>27</sup>.

44. For the AM peak period and using PDV22 the appellant estimates that the average westbound queue length would be 6.5 vehicles, with the average delays westbound and eastbound respectively being 43 and 10 seconds<sup>28</sup>.
45. The disagreement about whether the running of PDV22 has reasonably represented the operation of option 3, essentially revolves around the behavioural response of westbound drivers to the signed priority and whether that response would cause significant queuing and driver delays. In that regard the appellant contends that the signed priority has been modelled too rigidly and would not be reflective of actual driver behaviour. It is therefore argued that the Council's prediction of the severity of the westbound queuing and delay times would be unrealistic. That is because TRL712 records that when signed priority shuttle working is in place drivers that do not have the priority only give some measure of preference to drivers in the opposing stream. That resulting in drivers without the priority experiencing around 65% of any delay, while the opposing drivers experience around 35% of any delay.
46. While the appellant has sought to attach significant weight to the findings reported in TRL712, this report of study provides very little information about the computer modelling that was performed and the frequency and duration of the observations of driver behaviour that was undertaken at the two bridge locations that were used.
47. With respect to the computer model referred to in TRL712, were that model to be of wider utility than just perhaps for conducting this study, I would have expected that it would be known to HCC and could have been drawn to Mr Wall's attention during the pre-application and/or application discussions that took place. I say that because within Hampshire road narrowing at bridges/archway is not uncommon, given the examples cited in Mr Wall's evidence and my own observations in determining various unrelated appeals elsewhere in this county. In a similar vein when the previously mentioned email exchange took place between representatives of the TRL and a colleague of Mrs Lamont about software suitability, if the model used in the 1982 study was of utility today then the TRL could have drawn it to the attention of Mrs Lamont's colleague. Instead of that there is reference to the TRL planning to develop new software to model shuttle working. Whatever form the model used in 1982 took, given the advances in computing that have occurred in the last 37 years, it is unlikely it would bare comparison with modern day software.
48. With respect to the bridge locations used in the 1982 study, in the final paragraph in section 3.2 of TRL712 it is stated that traffic flow rates at the bridges and the proportions of traffic crossing the bridges in each direction were different. Those differences could have had implications for the observed driver behaviour that was used to validate the output from the running of the model used in this study.
49. In the time since TRL712's publication there have been significant changes in vehicle technology, most particularly in terms of braking and engine

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<sup>27</sup> Mrs Lamont's Rebuttal Statement, including Appendix 3, ID9, ID10 and ID14

<sup>28</sup> Page 9 of CD10A

technology, which have implications for acceleration and deceleration rates. Vehicle performance is now very different and would not necessarily be reflected in the modelling undertaken as part of the 1982 study. I am therefore doubtful as to whether the acceleration rates used for the purposes of a study undertaken in 1982 can be relied upon today.

50. With respect to the observance of priority signage, much has been made of the Council's PDV22 model runs being too cautious, with it being argued that the modelled driver behaviour would be more akin to that of 'strictly enforced' priority in the language of TRL712. However, option 3 would entail the installation of 'give way' lines and signage clearly indicating that drivers should give way to on-coming traffic. That signing arrangement would in effect be very similar to what is found in the case of a side road forming part of a 'priority junction' where give way signage and road markings are in place, which are routinely observed without strict enforcement. I consider normal driver behaviour is to observe the instructions or warnings appearing on traffic signs, whether they be of a prohibitive or warning type.
51. I therefore consider it reasonable to expect that westbound drivers faced with priority give way signage would take heed of that signage and thus approach the bridge with caution and would avoid commencing a crossing if there was any doubt that it could not be completed safely. So, on approaching the give way point and when there were no eastbound vehicles on the bridge, a driver would need to decide whether there would be enough time to complete a crossing of the bridge before encountering a vehicle travelling in the opposing direction.
52. There is some disagreement as to how much time a driver would deem necessary to make a safe crossing of the bridge, with it also being argued that in working out the time needed westbound drivers would also make a calculation as to whether their crossing of the bridge would unreasonably delay an eastbound vehicle's crossing of the bridge. It being argued, in line with findings reported in TRL712, that if a westbound driver decided its actions would delay an eastbound vehicle then the former would not proceed.
53. In terms of the decision making to be made by westbound drivers, I consider the normal behaviour would be to decide whether a crossing could safely be made, with any decision making about whether their actions would cause delay for a driver travelling in the opposite direction only being a secondary concern. That is because while a westbound driver would be able to judge how long they would need to cross the bridge, they would be unlikely to be able to make the calculation when precisely an eastbound vehicle would arrive at the point where its driver would want to commence its crossing and what any delay caused to the driver of the eastbound vehicle would be.
54. I recognise that some westbound 'platooning' would be likely to arise. That is one vehicle or a group of vehicles following immediately behind another/other westbound vehicle/vehicles already crossing the bridge, irrespective of whether there might be an eastbound vehicle waiting to make a crossing of the bridge. However, I consider the number of vehicles making crossings during an individual platooning event would not necessarily be as great as argued by the appellant. That is because there would come a point at which a westbound driver would decide to observe the priority signage, rather than continue a sequence of not observing it, given that being behind a line of

crossing vehicles it would not necessarily be possible to see whether an eastbound vehicle with priority was waiting to make a crossing. So, while some platooning would arise and would have the potential to reduce westbound queuing and delays, I am not persuaded its occurrence and delay reducing potential would be of the significance claimed by the appellant.

55. As I have indicated above there is very limited information contained within TRL712 about the precise nature of the observation of drivers at narrow bridges, ie how many times driver observations were undertaken and how long they were. I therefore have concerns about driver delay under option 3 being applied on the basis of 35% and 65% respectively for drivers with and without the signed priority, as per the finding reported in TRL712. That being something the appellant has done in critiquing the Council's running of PDV22 to arrive at its finding that if this software is used then in the AM peak period the average westbound queuing length would be 6.5 vehicles and the delay would be of the order of 43 seconds<sup>29</sup>. The Council's review of the appellant's running of PDV22 suggests that the average maximum westbound queue length could be around 20 vehicles at 07:50 AM (ID10).
56. However, it appears that an unintended consequence of the appellant's rebalancing of the priority to replicate a 35%/65% delay split, is the build-up of eastbound queuing in the absence of much westbound traffic, as is apparent from the 07:46:25 screenshot contained in ID9B. Additionally, vehicles travelling in opposing directions crossing the bridge at the same time would appear to have arisen, as shown in some of the screenshots contained in ID9B.
57. For all of the reasons given above I am therefore not persuaded that much weight should be attached to the findings reported in TRL712 for the purposes of calibrating or validating runs for either PDV22 or for that matter ARCADY.
58. It is contended that the PDV22 model runs undertaken by the Council have been incorrectly calibrated. However, the review of those runs undertaken by Systra has not highlighted any fundamental errors in the way its model has been built and run on the Council's behalf. I am therefore inclined to attach greater weight to the commentary on the model's running provided by Systra than Vectos. That is because Systra, as software designer, could be expected to know precisely what its model is intended to do and whether its running by a 'client' has been appropriate, when consideration is given to the parameters needed to run the software.
59. While PDV22 is a new model and may well become subject to some refinement as more use is made of it, on the basis of everything put to me in evidence about it, I consider its use is more appropriate to that of ARCADY. That is because PDV22 has been designed to address narrow road situations, ARCADY is intended to model circulatory road movements and the TRL has advised that ARCADY is not an appropriate tool to model the operation of option 3.
60. While the queuing and delays under option 3 predicted by the Council's running of PDV22 may be somewhat exaggerated, I consider no reliance should be placed on the appellant's ARCADY assessments. In practice the effect on the flow of traffic associated with option 3's introduction would be

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<sup>29</sup> Page 9 of CD10A

likely to somewhere between the range of the results yielded by the appellant's and the Council's running of PDV22. That would be likely to result in queue lengths and driver delay exceeding the AM peak period occurrences that HCC found to be unacceptable when it concluded that the traffic light controlled option 4 would be unacceptable, ie mean maximum queuing of nine vehicles and delays westbound and eastbound respectively of 36.8 and 32.4 seconds<sup>30</sup>.

61. On the basis of the evidence before me I consider that the introduction of option 3 would result in unacceptable levels of queuing and delay for vehicular users of Downend Road.
62. The Council contends that the visibility splay falling within land within the appellant's control would be inadequate for drivers turning right from the development's access onto Downend Road. While a visibility splay that would be fully compliant with the most recent guidance, ie that contained in ID6<sup>31</sup>, would encroach onto third party land, that land comprises undeveloped land, including a ditch. It is therefore unlikely that any development would arise within the third party land, so close to the edge of the highway, as to affect the visibility for drivers emerging from the development's access. I therefore consider that there would be adequate visibility for drivers turning right out of the development's access and that 'edging out' type movements would be unlikely to cause any significant conflicts between drivers emerging from the site access and westbound road users approaching to the give way point proposed under option 3.
63. Concern has also been raised that the introduction of option 3 would adversely affect the vehicular access used by the occupiers of 38 Downend Road (No 38). No 38 lies immediately to the south of the railway line and has a double width dropped kerb providing access to this dwelling's off-street parking. The visibility for drivers emerging from No 38 is already affected by the railway bridge's parapet.
64. The works associated with the implementation of option 3 would have some implications for the manoeuvring for drivers turning right from No 38. However, I consider the new situation would not be greatly different to the existing one and introducing a shuttle working layout would have very little effect on the forward visibility for vehicles emerging from No 38 because there would be no alterations to the railway bridge's parapet. Regard also needs to be paid to the fact that in any given day the number of vehicle movements associated with No 38's occupation would be quite limited, given this access serves a single property. I consider it of note that the safety auditing that has been undertaken to date has not highlighted any particular safety concerns for vehicles emerging from No 38's access associated with the design of option 3.
65. I am therefore not persuaded that the introduction of option 3 would have any adverse effect on the use of No 38's access.

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<sup>30</sup> Table 3.1 in CD29

<sup>31</sup> Junction visibility extract from Design Manual for Road and Bridges CD123 Revision 0 (August 2019)

Conclusions on pedestrian access via Downend Road and effects on the operation of Downend Road

66. For the reasons given above I found that the 1.2 metre wide footway to be provided as part of option 2, would not provide a safe facility for its users.
67. Option 3 through the narrowing of the carriageway to 3.5 metres would provide a safe pedestrian route. However, the narrowing of the carriageway would be likely to result in vehicle queuing and delay during the AM peak period. The precise degree of that queuing and delay is the subject of considerable disagreement, with it having proved quite difficult to model. That is because when Mr Wall prepared the original transport assessment (CD15) there appears to have been no readily available software capable of modelling a road narrowing such as that envisaged under option 3. That led to the use of ARCADY, which as I have explained above, I consider cannot be relied upon, not least because the TRL has stated that it is not suited to modelling shuttle working. In connection with presenting its appeal case the Council has used the comparatively new and not widely tested PDV22, the running of which suggests that considerable vehicle queuing and driver delay could be encountered by westbound vehicular traffic.
68. The appellant has sought to persuade me that the results from the Council's running of PDV22 should not be relied on because it has been set up to run with parameters that are exaggerating vehicle queuing and driver delay because the observation of the signed priority by westbound traffic has been too rigid. The appellant's critique of PDV22 in no small measure relies on computer modelling and behavioural observations at narrow bridges undertaken in connection with the TRL712 study dating back to 1982. However, for the reasons I have given above I have significant reservations about how meaningful the findings reported in TRL712 are today.
69. I recognise that the Council's running of PDV22 may have generated unduly pessimistic queuing lengths and delay times. That said I consider more credence can be attached to the Council's running of PDV22 than either the appellant's running of ARCADY or the appellant's modified running of PDV22, the latter understating the reasonable observance of the signed priority that would underpin the functioning of option 3. The degree of vehicle queuing and driver delay would probably be somewhere between levels estimated through the appellant's and the Council's running of PDV22. Given that the scale of the delay may well exceed that which led HCC to believe that a traffic light variant of option 3, ie option 4, should be discounted. I therefore consider that option 4 may well have been prematurely discounted by HCC. That is because HCC accepted option 3 as being a safe and efficient option, based on modelling reliant on the use of ARCADY.
70. Much has been made of HCC being accepting of both options 2 and 3, but as I have said above, I consider those options have pedestrian safety and capacity shortcomings. I am not persuaded, on the evidence available to me, that I should accept that because HCC has raised no objection to options 2 and 3 then either would be acceptable.
71. A fifth option (option 5) that would retain a two-way traffic flow, without a footway being provided or a narrowing of the carriageway, with an all pedestrian zone activated by traffic lights, on demand by pedestrians wishing to cross the bridge, was put forward prior to the appealed application's

determination. However, option 5 appears to have discounted on safety grounds by HCC on the erroneous premise that it would involve the operation of an unusual form of shuttle working. I therefore consider that option 5 may also have been prematurely discounted by HCC because of a fundamental misunderstanding of the way in which it would function.

72. On this issue I conclude that the development with the implementation of option 2 would make inadequate provision for pedestrian access via Downend Road, while the implementation of option 3, in making adequate provision for pedestrian users of Downend Road, would unacceptably affect the operation of this road because of the vehicle queuing and driver delay that would arise. The development would therefore be contrary to the second criterion of Policy CS5 of the Fareham Core Strategy of 2011 (the Core Strategy) insofar as when the development is taken as a whole it would generate significant demand for travel and were option 2 to be implemented it would not provide a good quality walking facility for its occupiers. The development, were option 3 to be implemented, would also be contrary to Policy CS5 (the second bullet point under the third criterion) because it would adversely affect the operation of Downend Road as a part of the local road network.
73. There would also be conflict with Policy DS40 of the Fareham Local Plan Part 2: Development Sites and Policies of 2015 (the DSP) because the implementation of option 3 would have an unacceptable traffic implication.
74. I also consider that there would be conflict with paragraph 109 of the National Planning Policy Framework (the Framework) because the implementation of option 3 in safeguarding the safety of pedestrians would give rise to a residual cumulative effect, vehicle queuing and driver delay, that would be severe for the road network. The development would also not accord with paragraph 110c) of the Framework because the implementation of option 2 would create a place that would not be safe because of the conflict that there would be between pedestrians and vehicles through the provision of an unduly narrow footway within part of the public highway.

#### *Accessibility to services and facilities*

75. The development would be on the edge of Portchester's already quite intensively built up area and it would adjoin an area that is predominantly residential in character. The existing development in the area lies to the south of the M27 and is on either side of the A27 corridor, which essentially follows an east/west alignment.
76. As I have previously indicated there is considerable disagreement about the site's accessibility to local services and facilities by non-private motorised modes of travel. In that regard the appellant is of the view that the development would generate in the region of 650 pedestrian movements per day, while the Council places that figure at a little short of 300 movements. Central to that disagreement is whether the distance there would be between the new homes and places of work and education, shopping, leisure and public transport facilities (the local facilities and services) would be too far as to be accessible by walking trips.
77. Figure T2 in the originally submitted Transport Assessment (page 66 of CD15) identifies where the local services and facilities are relative to the appeal site. Many of those service and facilities are clustered around Portchester's

shopping/district centre. When regard is paid to the various tables within Appendix C of Mr Wall's proof of evidence it is apparent that many of the local services and facilities shown in Figure T2 would be at distances from the development that would exceed the 'acceptable walking distances' referred to in CIHT2000 (CD25).

78. The three proposed pedestrian routes, A, B and C, would variously provide egress and ingress from the development. However, routes A, B and C would be of varying levels of attractiveness. In that regard I consider route C would not be particularly attractive because the section comprising footpath FP117 would be unlit and that would affect its general utility after darkness, particularly for commuters on their return from Portchester railway station. Generally, the use of all three routes would entail walking trips that would exceed the CIHT2000 guidelines for travelling to and from town centres, while the railway stations in Portchester and Fareham would not be within a comfortable walking distances from the development. The access to bus stops in the area would exceed the 400 metre guideline recently reaffirmed by the CIHT in its 'Buses in urban developments' guidance of January 2018 (CD28).
79. So, I think it reasonable to say that the development would fall short of being particularly accessible by transportation modes other than private motor vehicles. In that regard the appellants' estimates for the number of non-private motor vehicle trips may well be quite optimistic. That said this development would be close to many other dwellings in Portchester and the accessibility to local services and facilities would be similar to that for many of the existing residents of the area. Given the existing pattern of development in the area, I consider there would be few opportunities for new housing to be built in Portchester on sites that would be significantly more accessible than the appeal site, something that the maps in Appendix R to Mr Wall's proof of evidence show. In that regard it is of note that the Council is considering allocating this site for development in connection with the preparation of its new local plan.
80. On this issue I therefore conclude that there would not be an unreasonable level of accessibility to local services and facilities for the occupiers of the development by a range of modes of transport. I therefore consider that the development would accord with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP because it would not be situated in an inaccessible location and it would be well related to the existing urban settlement boundary for Portchester.

#### *Effects on the designated habitats*

81. The appellant, the Council and Natural England (NE) are agreed that the development would be likely to have a significant effect on the designated habitats, namely in-combination effects associated with: increased recreational activity in the Portsmouth Harbour Special Protection Area (SPA) and the Solent and Southampton Water SPA; and the increased risk of flooding in the Portsmouth Harbour SPA and Ramsar site and the Solent and Dorset Coast candidate SPA. Additionally, there would be potential for the development to have a significant effect either alone or in combination with other developments arising from nitrogen in waste water being discharged into the designated habitats.

82. Under the provisions of Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended) (the HRs), there is a requirement to undertake a screening assessment to determine whether a development alone or in combination with others would be likely to have a significant effect on integrity of the internationally important interest features that have caused a habitat to be designated. Having regard to the ecological information that is available to me, including the statement of common ground signed by the appellant, the Council and NE (CD13) I find for the purposes of undertaking a screening assessment that this development in combination with others would be likely to have a significant effect on the interest features of the designated habitats through additional recreational activity and the risk of flooding.
83. With respect to the matter of additional nitrogen in waste water being discharged into the designated habitats, I am content, on the basis of the nitrogen balance calculation included as Appendix 4 in CD13, that the development would not give rise to an increased discharge of nitrogen within the designated habitats.
84. Having undertaken a screening assessment and determined that there would be a significant effect on the designated habitats, I am content that mitigation could be provided so that the integrity of the qualifying features of the designated habitats would be safeguarded. The nature of the necessary mitigation has been identified in CD13 and would take the form of the payment of a contribution to fund management measures identified in the Solent Recreation Mitigation Strategy of 2018 and the imposition of planning conditions to avoid the development causing flooding in the area. The necessary financial contribution forms one of the planning obligations included in the executed S106.
85. In the event of this appeal being allowed I consider the imposition of conditions requiring: the incorporation of a sustainable drainage scheme within the development; the implementation of construction environmental management plan that included measures to preclude the pollution of the waters within the designated habitats during the construction phase; and a limitation on water usage for the occupiers of the development would be necessary and reasonable to safeguard the integrity of the designated habitats.
86. I therefore conclude that the development, with the provision of the mitigation I have referred to above, could be implemented so as to safeguard the integrity of the designated habitats. In that respect the development would accord with Policy CS4 of the Core Strategy and Policies DSP13 and DSP15 of the DSP because important habitats would be protected.

## **Other Matters**

### *Housing Land Supply*

87. The Council cannot currently demonstrate the availability of a five year housing supply (5yrHLS), with it being agreed that the current five year requirement is 2,730 dwellings. However, there is disagreement as to what the quantum of the 5yrHLS shortfall is when regard is paid to the supply of deliverable sites for homes, having regard to the definition for 'deliverable' stated in Annex 2 of the Framework. That definition stating to be considered deliverable:

'... sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular: ...  
b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.'

88. The appellant contends that the current deliverable supply of homes is 1,323 dwellings, equivalent to HLS of 2.4 years, while the Council argues that the deliverable supply of homes is 2,544 homes, equivalent to an HLS of 4.66 years<sup>32</sup>.
89. That difference being attributable to the appellant having deducted 1,221 dwellings from the deliverable supply identified by the Council. That deduction being made up of: 761 dwellings associated with large sites without development plan allocations and not benefiting from a planning permission (inclusive of some with resolutions to approve); 100 dwellings on the brownfield register, but with no submitted application; 70 dwellings concerning allocated sites but only with a resolution for approval; 50 dwellings concerning allocated sites without a planning permission; and 240 dwellings forming part of the Welborne allocation that would not be delivered in the five year period because planning permission for that development has not been issued.
90. The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.
91. The development would therefore be capable of making a meaningful contribution to the reduction of the current housing shortfall, with 215 dwellings anticipated to be delivered in the five year period between January 2022 and the end of March 2024<sup>33</sup>.

#### *Heritage effects*

92. The development would be situated within the extended settings for: Portchester Castle, a Grade I listed building and scheduled monument; Fort Nelson, a Grade II\* listed building and scheduled monument; and the Nelson Monument, a Grade II\* listed building. The Castle is situated to the south of the site towards the northern extremity of Portsmouth Harbour. Fort Nelson and the Nelson Monument lie to the north of the site, off Portsdown Hill Road.
93. The designated heritage assets are of significance because of their importance to the military history of the local area. However, I consider the effect of the development on the significance of the heritage assets would be less than

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<sup>32</sup> Having regard to the figures quoted in paragraphs 1.18 and 1.19 in the Housing Land Supply SoCG (CD14)

<sup>33</sup> Table 1 in Mrs Mulliner's PoE

substantial, having regard to the policies stated in section 16 (Conserving and enhancing the historic environment) of the Framework. That is because the development would be read within the context of Portchester's extensive established built up area. Nevertheless, paragraph 193 of the Framework advises '... great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'. The less than substantial harm I have referred to therefore attracts great weight.

### *Planning Obligations*

94. The S106 would secure the provision of 40% affordable housing within the development to accord with the provisions of Policy CS18 of the Core Strategy. To mitigate the development's off-site effects on the operation of the local highway network and demands on local transport infrastructure the S106 includes various obligations that would require contributions to be paid to fund appropriate works. There are also obligations relating to the, the provision of and the payment of maintenance contributions for public open and play space and the payment of a contribution for school facilities in the area. To minimise dependency on private motor vehicle usage amongst occupiers of the development the S106 includes planning obligations that would require the undertaking of improvements to the Cams bridge and implementation of a travel plan.
95. Those planning obligations would address development plan policy requirements and I consider that they would be: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. While the planning obligations are necessary, of themselves there is nothing particularly exceptional about them.

### **Planning Balance and Conclusion**

96. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
97. For the reasons given above I have found that the development with the implementation of the option 2 alteration to the Downend Road railway bridge would make inadequate provision for pedestrian access via Downend Road. I have also found that while the implementation of the option 3 alteration to the Downend Road railway bridge would make adequate provision for pedestrian users of Downend Road, the development would unacceptably affect the operation of this road because of the vehicle queuing and driver delay that would arise. I consider those unacceptable effects of the development give rise to conflict with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP and paragraphs 109 and 110c). I consider that the elements of Policies CS5 and DSP40 that the development would be in conflict with are consistent with the national policy and are the most important development plan policies for the purposes of the determination of this appeal. I therefore consider that great weight should be attached to the conflict with the development plan that I have identified.

98. I have found that the accessibility to local services and facilities by modes of transportation other than private motor vehicles would not be unreasonable. That is something that weighs for the social benefits of the development. The development would be capable of being implemented in a manner that would safeguard the integrity of the off-site designated habitats and in that regard the development would have a neutral effect on the natural environment. In relation to these main issues there would be compliance with some of the development plan's policies. Nevertheless, the conflicts with the development plan that I have identified are of sufficient importance that the development should be regarded as being in conflict with the development plan as a whole.
99. There would be significant social and economic benefits arising from the construction and occupation of up to 350 dwellings, including the short term boost to the supply of market and affordable homes in the Council's area. There would be some harm to the setting of the nationally designated heritage assets in the area, however, I have found that harm would be less than substantial and I consider that harm would be outweighed by the previously mentioned social and economic benefits arising from the development.
100. I am of the view that the unacceptable harm to pedestrian safety and the operation of the public highway that I have identified could not be addressed through the imposition of reasonable planning conditions. I have assessed all of the other material considerations in this case, including the benefits identified by the Appellant, but in the overall planning balance I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
101. I therefore conclude that the appeal should be dismissed.

*Grahame Gould*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

John Litton	Of Queens Counsel instructed by Terence O'Rourke Limited
Tim Wall BA MSc MCIHT CMILT	Associate Partner of i-Transport LLP
Jacqueline Mulliner BA (Hons) BTP (Dist) MRTPI	Director and Head of national planning with Terence O'Rourke Limited

### FOR FAREHAM BOROUGH COUNCIL:

David Lintott	Of Counsel instructed by the Council's legal officer
Vera Lamont BEng MICE FCIHT MCMi	Director with Mayer Brown
Andrew Burgess BA (Hons) MRTPI FRSA	Senior consultant with Adams and Hendry Consulting Limited
Richard Wright	Principal Planner (Development Management)

### INTERESTED PARTIES:

Councillor Nick Walker	Fareham Borough Council
Councillor Roger Price	Fareham Borough Council
Councillor Shaun Cunningham	Fareham Borough Council
John McClimont	Chairman Fareham Society
Brian Eastop	Local Resident
Anne Brierly	Local Resident

## **INQUIRY DOCUMENTS (IDs) SUBMITTED AT OR AFTER THE INQUIRY**

ID1	Mr Lintott's opening submissions on behalf of Fareham Borough Council
ID2	Mr Litton's opening submissions on behalf of the appellant, with appendices
ID3	Statement of Councillor Walker and Councillor Sue Bell
ID4	Statement of Mr McClimont, Chairman of the Fareham Society

- ID5 Article by John Fruin 'Designing for pedestrians: a level-of-service concept'
- ID6 Junction visibility extract from Design Manual for Road and Bridges CD123 Revision 0 (August 2019)
- ID7 i-Transport drawings ITB12212-TR: 001A; 002A; 003A; 006A; and 007A and ITB12212-GA-104A annotated by Mayer Brown
- ID8 Mayer Brown additional statement of facts
- ID9 Vectos Model re-run by Mayer Brown output data and screen shots
- ID10 Queue Assessment Information (including data sheets) from i-Transport, response to rerun of Vectos Model undertaken by Mayer Brown
- ID11 Annotated services/facilities context maps of the footways at bridges/tunnels examples included in Appendix V of Mr Wall's Proof of Evidence
- ID12 Vectos comments on the Downend Road Railway Bridge Paramics Modelling undertaken by Mayer Brown in September 2019 further to the review comments being made by Systra
- ID13 Councillor's Cunningham's speaking note
- ID14 Mayer Brown Video file for the operation of Downend Road Bridge
- ID15 i-Transport Video file for the operation of Downend Road Bridge
- ID16 Mrs Mulliner's speaking note on housing land supply
- ID17 Copies of development plan policies CS4, DSP13, DSP15
- ID18 Final version of list of suggested planning
- ID19 Certificated copy of the executed Section 106 agreement
- ID20 Final version of the Inquiry Position Statement
- ID21 Mr Lintott's written closing submissions on behalf of Fareham Borough Council
- ID22 Mr Litton's written closing submissions on behalf of the appellant



## Appeal Decisions

Inquiry Held on 9-12, 16-19 and 23-25 February 2021

Accompanied site visit made on 13 April 2021

**by I Jenkins BSc CEng MICE MCIWEM**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 8<sup>th</sup> June 2021**

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### **Appeal A Ref: APP/A1720/W/20/3252180**

#### **Land at Newgate Lane (North), Fareham,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Fareham Land LP against Fareham Borough Council.
  - The application Ref. P/18/118/OA, is dated 19 September 2018.
  - The development proposed is demolition of existing buildings and development of up to 75 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure.
- 

### **Appeal B Ref: APP/A1720/W/20/3252185**

#### **Land at Newgate Lane (South), Fareham,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Bargate Homes Ltd. against Fareham Borough Council.
  - The application Ref. P/19/0460/OA, is dated 26 April 2019.
  - The development proposed is demolition of existing buildings and development of up to 115 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure.
- 

## **Decisions**

1. Appeal A is dismissed and the outline planning permission sought is refused.
2. Appeal B is dismissed and the outline planning permission sought is refused.

## **Procedural matters**

3. In each case, the planning application subject of appeal is in outline, with all detailed matters except access reserved for future consideration. While the application subject of appeal B was with the Council for determination, the scheme was revised with the agreement of the Council by limiting the unit numbers to 'up to 115 dwellings', rather than 'up to 125 dwellings' as identified on the planning application form. The change was supported by amended plans. I have considered the appeal on the basis of the revised scheme and reflected the details in the summary information above.
4. Following the submission of the appeals, the Council's Planning Committee determined on the 24 June 2020 that, were it still in a position to do so,

- it would have refused to grant planning permission in both cases. In support of its view, the Council cited 15 reasons for refusal in each case (a)-o)). The reasons for refusal were the same with the exception of: appeal A reason e), which relates to the loss of best and most versatile agricultural land; and, appeal B reason i) related to the protection and enhancement of Chamomile. Prior to the Inquiry, the Council confirmed that, in each case, 3 of the other reasons for refusal had been satisfactorily addressed: appeal A reasons f), g) and i); and, appeal B reasons e), f) and h).
5. Each of the schemes is supported by a formally completed unilateral undertaking (UU): appeal site A-UUA; and, appeal site B-UUB, which seek to secure a number of financial contributions, Affordable Housing and sustainable travel measures. In addition, the appellants have provided a unilateral undertaking related to off-site mitigation for the loss of a low use Solent Wader and Brent Goose site (UUC). I have taken those UUs into account.
  6. Reasons for refusal j) and k) relate to the absence of appropriate measures to mitigate likely adverse effects on the integrity of European Protected Sites. The appellants and the Council are content that those matters have now been satisfactorily addressed by mitigation measures secured by the unilateral undertakings. Nonetheless, there is no dispute that if I were minded to allow the appeals, I would need to re-consult Natural England and undertake an Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017*.
  7. Reasons for refusal k)-o) relate to the absence of legal agreements to secure other necessary mitigation measures. However, the Council now considers that those reasons have been satisfactorily addressed by the submitted UUs or could be addressed through the imposition of suitable conditions.
  8. Insofar as appeal A reason for refusal h) and appeal B reason for refusal g) relate to the capacity of the Newgate Lane East junction with Newgate Lane, the Council withdrew<sup>1</sup> that aspect of its case before the appellants presented their evidence on the matter<sup>2</sup>. Therefore, I have not considered it further.

### **Main Issues**

9. I consider that the main issues in these cases are: the effect of the proposals on the character and appearance of the area; the effect on highway safety; whether, with reference to accessibility, the schemes would be sustainably located; the effect on the spatial development strategy for the area; and, the effect on housing land supply.

### **Reasons**

10. Appeal site A comprises 3.95 hectares of agricultural land, which is bounded by a small area of agricultural land to the north, Newgate Lane to the west and Newgate Lane East to the east. The site shares a small proportion of its southern boundary with Hambrook Lodge and the remainder is shared with appeal site B. The appeal A proposal would involve the development of up to 75 dwellings within the site as well as other associated works. Appeal site B comprises 6.1 hectares of agricultural land, which is bounded by Woodcote Lane to the south, Newgate Lane to the west and Newgate Lane East to the

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<sup>1</sup> Including the evidence given by Mr Whitehead.

<sup>2</sup> Inquiry document no. 23.

east. Part way along its length, the northern boundary of the site wraps around the western, southern, and eastern boundaries of the grounds of Hambrook Lodge. Otherwise appeal site B shares its northern boundary with appeal site A. The appeal B proposal would involve the development of up to 115 dwellings within the site as well as other associated works.

11. Vehicular, cycle and pedestrian access to each site would be provided by an access road leading from Newgate Lane. A pedestrian/cycle route is also proposed from appeal site A through appeal site B to Woodcote Lane, leading to the proposed Toucan crossing of Newgate Lane East and Bridgemary. The proposed Toucan crossing would be funded through the provision of a contribution secured by UUB. The *Statement of Common Ground-Linked Delivery* (SoCGLD) has been agreed between the appellants and the Council. It indicates that it would be possible to ensure that the appeal A scheme cannot come forward independently of the appeal B scheme through the imposition of a Grampian condition, thereby ensuring the provision of those proposed access links.
12. The appeal sites form part of an area of countryside situated between the urban settlement boundary of Stubbington, to the west, Gosport, to the east and Fareham, to the north. The settlement referred to as Peel Common in the evidence of the main parties is limited to the residential and commercial properties located off Newgate Lane, Woodcote Lane and Albert Road, within the administrative area of Fareham Borough Council (the Council). Under the terms of the Development Plan, Peel Common does not have a defined settlement boundary and it is also situated in the area of countryside that includes the appeal sites. Furthermore, it does not include the 'Peel Common' housing estate located further to the east within Gosport Borough Council's administrative area. The closest urban boundary to the appeal sites is to the east and is associated with a number of areas within Gosport, such as Bridgemary, Woodcot and the 'Peel Common' housing estate. For simplicity, those areas have been jointly referred to in the evidence of the main parties as Bridgemary. I have taken the same approach in these decisions.
13. Policy CS14 of the *Fareham Local Development Framework Core Strategy, 2011* (LP1) indicates that built development on land outside the defined settlements will be strictly controlled to protect the countryside from development which would adversely affect its landscape character, appearance and function. Policy DSP6 of *the Local Plan Part 2: Development Sites and Policies, 2015* (LP2) indicates that there will be a presumption against new residential development outside the defined urban settlement boundaries (as identified on the Policies Map) and that proposals should not result in detrimental impact on the character or landscape of the surrounding area.
14. The area of countryside situated between the settlement boundary of Stubbington, to the west, Gosport, to the east and Fareham, to the north also forms part of the Stubbington/Lee-on-the-Solent and Fareham/Gosport Strategic Gap (Fareham-Stubbington Gap), shown on the LP2 Policies Map Booklet. LP1 Policy CS22 indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
15. However, the Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites.

The reasoned justification for LP2 Policy DSP40 indicates that the Council is committed to delivering the housing targets in the Core Strategy, and so it is important to provide a contingency position in the Plan to deal with unforeseen problems with delivery. To that end, Policy DSP40 indicates that where it can be demonstrated that the Council does not have a five-year supply of land for housing, additional sites, outside the urban area boundary, within the countryside and Strategic Gaps, may be permitted where they meet a number of criteria (the DSP40 contingency). Those criteria are not as restrictive as the requirements of LP1 Policies CS14 and CS22 or LP2 Policy DSP6. To my mind, it follows that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies would be reduced and would be outweighed by compliance with LP2 Policy DSP40.

### ***Character and appearance of the area***

16. Criterion (ii) of LP2 Policy DSP40 requires that the proposal is well related to the existing urban settlement boundaries and can be well integrated with the neighbouring settlement. To ensure that this is the case, the reasoned justification for the Policy indicates that sensitive design will be necessary. The Council and the appellants agree that the existing urban settlement boundary of Bridgemary is relevant in this context. Criterion (iii) of Policy DSP40 requires that the proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the countryside and, if relevant, the Strategic Gaps. In this context the main parties agree that both Bridgemary and Peel Common are relevant neighbouring settlements. The reasoned justification for LP1 Policy CS22, which deals with development in Strategic Gaps, indicates that they do not have intrinsic landscape value but are important in maintaining the settlement pattern. I consider therefore, that the Strategic Gap designation is of little relevance to this particular main issue. I deal with the effect on the Fareham-Stubbington Gap later in this decision.
17. Peel Common would be the closest settlement to both appeal sites. The pattern of built development there is characterised, for the most part, by ribbon development that fronts onto the western side of Newgate Lane, with small spurs eastwards along the southern side of Woodcote Lane and westwards along Albert Road. Along Newgate Lane the ribbon of development only extends northwards to a point just beyond the alignment of the southern boundary of appeal site A on the opposite side of the highway. I consider that the only notable development to the west of appeal site A, on the western side of Newgate Lane, comprises: Peel Common Wastewater Treatment Works, which is set well back from the highway and is screened from view by landscaping; and, Newlands' Solar Farm, which is relatively low profile. Peel Common is described by the *Fareham Landscape Assessment, 2017* (FLA) as an isolated small settlement and, in my view, given its scale, pattern of development and location in the countryside, that is a reasonable assessment.
18. Both appeal sites are divided into an eastern and western section by the River Alver, which runs in a north-south direction through the sites. To the east of the river the land within the appeal sites is predominantly arable and to the west grassland. The latest Illustrative Masterplans submitted in support of the schemes indicate that, in both cases, the proposed dwellings would be clustered on the eastern side of the River Alver and the land to the west would comprise public open space. To my mind, the absence of residential

development from the western sections of the sites would be necessary, due to the environmental constraints associated with the land to the west of the river, and it could be secured by condition. The constraints include areas at high risk of surface water flooding and of particular ecological value.

19. As a result, and in stark contrast to the existing settlement pattern of Peel Common, none of the proposed residential properties would front onto Newgate Lane or be directly accessed from either Newgate Lane or Woodcote Lane. Links between appeal site B and Woodcote Lane would be limited to a pedestrian/cycleway connection. In each case, the main access to the proposed residential areas would comprise a single access road between Newgate Lane and the eastern section of each site. The sections of these roads through the proposed public open space, in the western sections of the sites, would be devoid of roadside development for the reasons set out above, which would further weaken the relationship between the proposed residential areas and the existing settlement. I understand that in terms of dwelling numbers, the appeal B scheme would be larger than the size of the existing settlement of Peel Common and the appeal schemes together would be approximately double its size. I consider that, with particular reference to their size and location, the proposals have not been sensitively designed to reflect the character of the neighbouring settlement of Peel Common, contrary to the aims of LP2 policy DSP40(iii). Furthermore, in my judgement, due to the site constraints, these are not matters that could be satisfactorily mitigated through design at the reserved matters stage.
20. The area of Bridgemarky, which is situated to the east of the appeal sites, is primarily residential in character, with a variety of building styles generally of 1 to 2-storeys in height. A network of roads and footways provides for ease of movement within that residential area and closely integrates it with the much larger urban area of Gosport. The appeal proposals would also be residential in character and proposed buildings of a similar scale could be secured by condition. However, the appeal sites would be set well apart from that existing urban area, beyond agricultural fields and a recreation ground. The most direct access route between them would be along Woodcote Lane, across Newgate Lane East and along Brookes Lane; a route unsuitable for cars. In my judgement, the appeal schemes, whether considered on their own or together would comprise and would be perceived as islands of development in the countryside set apart from the existing urban settlements. They would not amount to logical extensions to the existing urban areas. I consider that, with particular reference to their isolated location, the proposals have not been sensitively designed to reflect the character of the neighbouring settlement of Bridgemarky. Furthermore, they would not be well related to the existing urban settlement boundary of Bridgemarky or well-integrated with it. In these respects, the proposals would conflict with LP2 Policy DSP40(ii) and (iii). In my judgement, due to the location of the sites, these are not matters that could be satisfactorily mitigated through design at the reserved matters stage.
21. In relation to the requirement of Policy DSP40(iii) that any adverse impact on the countryside be minimised, the Council argues that 'minimise' should be interpreted as requiring any adverse impact to be small or insignificant. I do not agree. The aim of the Policy is to facilitate development in the countryside relative in scale to the demonstrated five-year housing land supply shortfall. To my mind, any new housing development in the countryside would be likely to register some adverse landscape and visual effect, and

development of a scale to address a substantial shortfall would be unlikely to register a small or insignificant impact. The Council's approach would make the Policy self-defeating. Given the aim of the Policy with respect to housing land supply, I consider that it would be reasonable to take 'minimise' to mean limiting any adverse impact, having regard to factors such as careful location, scale, disposition and landscape treatment.

22. The Framework places particular emphasis on the protection and enhancement of valued landscapes (in a manner commensurate with their statutory status or identified quality in the Development Plan). It seeks to give the greatest level of protection to the landscape and scenic beauty of designated areas, such as National Parks and Areas of Outstanding National Beauty (AONB). The appeal sites are not the subject of any statutory or non-statutory landscape designations. Nonetheless, *Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA)* by the Landscape Institute and Institute of Environmental Management & Assessment indicates that the absence of a designation does not mean that an area of landscape is without any value and points to landscape character assessments as a means of identifying which aspects of a landscape are particularly valued. Furthermore, insofar as it seeks to minimise any adverse impact on the countryside, I consider that LP2 Policy DSP40 is consistent with the Framework, which seeks to ensure that decisions contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
23. As the planning applications the subject of these appeals are in outline, a full assessment of the landscape and visual impacts of the proposed schemes cannot be carried out at this stage. Nonetheless, the illustrative layout plans indicate that, in each case, the proposed dwellings would be set back from the perimeter of the site beyond relatively narrow areas of landscaping. To my mind, the scope for landscaping would be unlikely to be significantly greater, given the number of dwellings proposed and that it would not be reasonable to seek to use a condition to modify the developments to make them substantially smaller in terms of unit numbers than that which was applied for. In my view, that would amount to a change upon which interested parties could reasonably expect to be consulted and would require a new application. Whilst the Design and Access Statements indicate that the proposed buildings may be up to 3-storeys in height, the appellants have indicated that they could be limited to 1-2 storeys, in keeping with the surroundings, through the imposition of conditions and without reducing the numbers of units proposed.

#### *Landscape impact*

24. GLVIA indicates that the assessment of landscape effects involves assessing the effects on the landscape as a resource in its own right. This is not just about physical elements and features that make up the landscape; it also embraces the aesthetic<sup>3</sup>, perceptual and experiential aspects of the landscape that make different places distinctive/valued.
25. Natural England's *National Character Assessment* places the appeal sites within the South Coast Plain National Character Area, the characteristics of which include that the plain slopes gently southwards towards the coast and there are

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<sup>3</sup> CD138 page 84 Box 5.1 'scenic quality...landscapes that appeal primarily to the visual senses', perceptual aspects...perceptual qualities, notably wilderness and/or tranquillity', 'experiential 'evidence that the landscape is valued for recreational activity where experience of the landscape is important'.

stretches of farmland between developed areas. At a county level, the sites form part of the Gosport and Fareham Coastal Plain Landscape Character Area, as identified by the *Hampshire Integrated Character Assessment 2012* (HICA), and within that area part of the Coastal Plain Open Landscape Type.

Its characteristics include, amongst other things, extensive and flat or gently sloping plain, often associated with arable land uses and some of the most densely developed areas in Hampshire have occurred in this landscape.

The HICA informed the *Fareham Landscape Assessment, 2017* (FLA), which was commissioned by the Council to inform emerging Local Plan policy.

26. The FLA identifies the area within which the appeal sites are situated as Landscape Character Area 8 (LCA 8), Woodcot-Alver Valley. LCA 8 forms part of the easternmost extent of the Fareham-Stubbington Gap and is divided into 5 Local Landscape Character Areas (LLCAs). More specifically appeal site A and the majority of appeal site B, with the exception of the strip of land to the west of the River Alver, fall within LLCA 8.1a. This area is generally bounded by Newgate lane to the west, Woodcote Lane to the south, the western edge of Bridgemary to the east and Speedfields Park Playing Fields to the north. Outside of this LLCA, to the west and south are the main residential sections of the Peel Common settlement, which fall within LLCA 8.2: *Peel Common and Alver Valley*, as does the western section of the appeal B site. Newlands' Solar Farm and Peel Common Wastewater Treatment Works, which are sited to the west of the appeal sites, fall within LLCA 7.1: *Fareham-Stubbington Gap*.
27. The FLA comments both on the character of LLCA 8.1a prior to the completion of Newgate Lane East and on the likely implications of that highways scheme.
28. Prior to the completion of Newgate Lane East, the FLA recognises that LLCA 8.1a is not covered by any current national or local landscape designation, its scenic quality is not exceptional and it is affected by some localised intrusion of urban features around its periphery. It indicates that LLCA 8.1a shares the typically flat, low-lying character of the coastal plain landscape and whilst it lacks the very open, expansive character of other parts of the coastal plain (including adjacent land within the Strategic Gap to the west), it nevertheless has a relatively open and large-scale character. More specifically, it is generally devoid of built development (apart from buildings at Peel Farm<sup>4</sup>), retains a predominantly open, rural, agricultural character, and tree belts along its boundaries to the north, east and south give the area a sense of enclosure from surrounding urban areas and contribute to its aesthetic appeal. The FLA indicates that overall, the landscape value of LLCA 8.1a is moderate to high. Furthermore, the FLA identifies that the landscape resource has a high susceptibility to change, as it has very limited capacity to accommodate development without a significant impact on the integrity of the area's rural, agricultural character. Whilst these judgements are not disputed, the Council and appellants disagree over the impact that the construction of Newgate Lane East has had.
29. Regarding Newgate Lane East, the FLA anticipated that as the road corridor would be relatively narrow, unaffected land within the rest of the area should be of sufficient scale to maintain its essentially rural character. In my view, this is the case notwithstanding that the roadside planting, which has the potential to reduce the visibility of the highway and associated fencing, has yet to

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<sup>4</sup> Around Hambrook Lodge.

mature. Furthermore, given the relatively low profile of the road scheme, the openness of the area is largely unaffected. Under these circumstances, I consider that whilst the landscape value of LLCA 8.1a has been reduced by the road scheme to medium, the susceptibility of the landscape to change remains high, rather than low/medium identified by the *Landscape and Visual Impact Assessments* submitted in support of the applications (LVIAs). Support for this judgement is provided by the FLA, which indicates that significant further development in addition to the road scheme would almost certainly have an overwhelming urbanising effect, potentially tipping the balance towards a predominantly urban character. Overall, I regard the sensitivity of the landscape resource within LLCA 8.1a to be medium/high, consistent with the Council's Landscape and Visual Assessment findings, and contrary to the low/medium findings set out in the LVIAs.

30. In both cases, the proposals would replace a significant proportion of the agricultural land within LLCA 8.1a with residential development. Whether single-storey or taller buildings are proposed, the massing of each development would add to the sense of enclosure of this LLCA, greatly diminishing its open character and the duration of the impact would be long term. Considering each scheme on its own, the size and scale of the change, taken together with the existing limited intrusion from surrounding urban influences and the effect of Newgate Lane East, would be sufficient in my judgement to tip the balance towards a predominantly urban character. I acknowledge that the impact would not extend beyond LLCA 8.1 to affect a wider area of landscape. Nonetheless, I judge the magnitude of change as medium and the significance would be moderate to moderate/major adverse, even after mitigation. In my view, the effect would not be as low as the minor/moderate or minor adverse significance of effect identified by the LVIAs, which the appellants suggest would be considered acceptable and would not constitute an overall 'harm' to the landscape.
31. As I have indicated, the only section of the appeal sites that falls within LLCA 8.2 is the western section of appeal site B, the development of which would be constrained by its ecological value. Therefore, I give little weight to the view set out in the FLA regarding LLCA 8.2 that there may be potential for some modest, small scale development associated with the existing built form at Peel Common.
32. I consider overall that the proposals would each cause significant harm to the landscape of the area.

#### *Visual impact*

33. There is no dispute that the area from which the proposed developments would potentially be visible, the visual envelope, would be limited. This is due to a combination of the flat topography of the surroundings and the effects of vertical elements such as neighbouring settlement edges and some tall vegetation. As a result, the visual receptors identified by the Council and the appellants are relatively close to the appeal sites and the associated assessments of visual effects provided by those parties are broadly comparable, finding a number of adverse impacts of moderate or greater significance.
34. As regards the users of Newgate Lane, I consider them to be of medium sensitivity to change, consistent with the position set out in the LVIAs and by

- the Council. However, the proposed development would significantly alter views eastwards. Currently long views can be enjoyed from some vantage points across relatively open countryside, Newgate Lane East being low profile infrastructure, towards the tree lined edge of Bridgemary and the 'big skies' noted by the *Technical Review of Areas of Special Landscape Quality and Strategic Gaps* (2020)(TR). As a result of either appeal scheme on its own, residential development would become a prominent feature in the foreground of such views, notwithstanding the proposed setback beyond an area of open space between the highway and the proposed dwellings. From some vantage points, the long rural view would be interrupted entirely, being replaced by a short suburban view of one of the appeal schemes, which would be likely to break the existing skyline and greatly reduce the sense of space. I regard the magnitude of impact as high and the significance of impact as major/moderate adverse, in common with the Council.
35. The LVIA's did not consider vantage points along Newgate Lane East, which was under construction when the assessments were undertaken. I consider users of Newgate Lane East to be of medium sensitivity to change, in common with users of Newgate Lane. It is anticipated that the proposed buildings would be set back from Newgate Lane East beyond a strip of landscaping, within the sites and along the edge of the highway. Nonetheless, given the likely scale and disposition of the built development, I consider it likely that it would still be visible to some extent from that neighbouring road. In my judgement, when travelling between the built-up areas to the north and south, the respite provided by the surrounding countryside along Newgate Lane East is of notable value. That value would be greatly diminished as a result of either scheme. Both would foreshorten views to the west and tip the balance from a predominantly rural to suburban experience. The magnitude of impact on that receptor would be medium and the significance of impact moderate adverse.
36. Overall, I consider that the significance of the visual impact would be moderate to moderate/major adverse. It would have a significant adverse effect on the appearance of the area.
37. The FLA sets development criteria to be met in order to protect the character and quality of landscape resources, views, visual amenity, urban setting and green infrastructure. Whilst the aim of LP2 Policy DSP40 is to minimise, rather than avoid, any adverse impact, I consider that they are of some assistance when judging the extent to which there would be an impact and whether it can be regarded as being minimised. I acknowledge, that in the context of making some provision for housing land supply in the countryside, it would be unrealistic to expect the open, predominantly agricultural and undeveloped rural character of area LLCA 8.1a to be entirely protected as the FLA suggests. However, the proposals would cause significant harm in that regard. Furthermore, rather than situating the proposed developments to the east of Newgate Lane East, next to existing urban areas, the schemes would amount to the creation of substantial new pockets of urbanising built development within existing open agricultural land.
38. I conclude that, in each case, the proposal would cause significant harm to the character and appearance of the area, having had regard to the location, disposition, likely scale and landscape treatment, each would fail to minimise the adverse impact on the countryside. The proposals would conflict with LP2 Policy DSP40(ii) and (iii).

### **Highway safety**

39. The *Statement of Common Ground on Transport (SoCGT)*, agreed between the Council and the appellants, states it is agreed that the individual and cumulative impacts of the northern and southern sites would have a detrimental impact on the operation of the existing right turn lane priority junction between Newgate Lane and Newgate Lane East. Furthermore, this cannot be mitigated by priority junction improvements and so a signalised junction is proposed.
40. The proposed signalised junction would introduce a flare from 1 to 2-lanes on the northbound Newgate Lane East approach to the junction and a merge back to 1 lane some distance after the junction. Furthermore, the SoCGT indicates, in relation to southbound vehicles seeking to access Newgate Lane from Newgate Lane East across 2 lanes of on-coming traffic, the proposed signal method of control would be the provision of an indicative arrow right turn stage. Under the proposed signalling arrangement, right turn movements from Newgate Lane East into Newgate Lane could occur at three points in the cycle of the signals: firstly, turning in gaps in the free flowing northbound traffic; secondly, during the intergreen period when the northbound flow is stopped and before the Newgate Lane traffic is released; and, then if right turners are still waiting after the cycle, the indicative arrow would be triggered to allow them to turn unopposed. The SoCGT confirms that the appellants are proposing an indicative arrow arrangement rather than the provision of a fully signalised right turn stage, as the latter would operate unacceptably in terms of capacity.
41. The appellants' *Stage 1 Road Safety Audit (RSA)* identifies a potential problem with the proposed right turn lane arrangement, with reference to CD 123 of the *Design Manual for Roads and Bridges (DMRB)*. In the context of right turning traffic movements at signal-controlled junctions, CD 123 indicates that where the 85<sup>th</sup> percentile approach speed is greater than 45 mph, there is an increased risk of accidents between right-turning vehicles seeking gaps and oncoming vehicles travelling at speed. It confirms that where the 85<sup>th</sup> percentile approach speed is greater than 45 mph, right hand turns should be separately signalised. Against that background, the RSA raises the concern that higher northbound vehicle speeds (particularly in off-peak traffic conditions) may mean that gap acceptance by the drivers of right turning vehicles could lead to right-turn collisions or to sudden breaking and shunt type collisions. It recommends that, at detailed design stage, signal staging/phasing should incorporate a separately signalled right-turn into Newgate Lane and that it would be appropriate to measure northbound vehicle speeds to design signal staging and phasing arrangements accordingly.
42. DMRB CA 185 sets out the approach to vehicle speed measurement on trunk roads where existing vehicle speeds are necessary to set the basis for the design of signal-controlled junctions. CA 185 confirms that 85<sup>th</sup> percentile vehicle speeds shall be calculated where designs are to be based on measured vehicle speeds. It is common ground that, whilst this standard is intended for use in relation to trunk roads, in the absence of any other reference, it can be used to guide the measurement of vehicle speeds on other roads, such as Newgate Lane East.
43. The SoCGT identifies 3 speed surveys whose results are relevant to the consideration of northbound speeds on Newgate Lane East. They were

undertaken in: September/October 2018; February/March 2020; and November 2020. All three surveys include measurements undertaken at weekends, contrary to the CA 185 protocol which indicates that speed measurements shall not be undertaken at weekends. Nevertheless, they were not limited to weekend measurements. Each survey included measurements on other days of the week, and I have not been provided with any evidence to show that the 85<sup>th</sup> percentile speeds derived from the surveys are not reasonably representative of the weekdays surveyed. However, the last survey was carried out during a period affected by movement restrictions associated with the coronavirus pandemic and the recorded average flow rates are noticeably lower than those recorded at the same times of day in the other two surveys. I consider that, under these circumstances, greater weight is attributable to the results of the earlier two surveys.

44. CA 185 indicates that a minimum number of 200 vehicles speeds shall be recorded in the individual speed measurement period and speed measurements should be taken outside of peak traffic flow periods. The peak hours identified by the *Transport Assessments* submitted in support of the appeal planning applications are 08:00-09:00 hrs (AM peak) and 17:00-18:00 hrs (PM peak). Whilst CA 185 indicates that non-peak periods are typically between 10:00-12:00 hrs and 14:00-16:00 hrs, I share the view of the Highway Authority (HA) that this does not rule out consideration of other non-peak periods, so long as a minimum number of 200 vehicles speeds are recorded in the individual speed measurement period as required by CA 185. Having regard to the results of the September/October 2018 and February/March 2020 surveys for northbound traffic on Newgate Lane East, in addition to the typical periods identified above, the period from 05:00-06:00 hrs meets these criteria, falling outside of the peak hours and having a recorded average flow greater than 200 vehicles.
45. The September/October 2018 and February/March 2020 survey results record 85<sup>th</sup> percentile speeds in the periods 10:00-12:00 hrs and 14:00-16:00 hrs in the range 41 mph-44.8 mph when a wet weather correction is applied. The upper end of this range being only marginally below 45 mph. In the period 05:00-06:00 hrs the results exceeded 45 mph. CA 185 indicates that where there is a difference in the 85<sup>th</sup> percentile speeds derived from the individual speed measurement periods, the higher value shall be used in the subsequent design.
46. I give little weight to the view of the appellants that the introduction of traffic signals, as proposed, would be likely to result in drivers being more cautious and so reduce their vehicle speeds. Even if that were the case, it is not clear that it would reduce 85<sup>th</sup> percentile speeds in the period 05:00-06:00 hrs to below 45 mph or that this undefined factor should be taken into account in the design. The appellants have suggested that in the absence of any demand over-night, the signals would revert to an all red stage, which would further slow the speeds of vehicles. However, it appears that there would be likely to be demand in the period 05:00-06:00 hrs. Furthermore, the HA has confirmed, for a number of reasons, that is not the way multi-arm junctions are set up on its network. Firstly, for junction efficiency, the signals would be expected to rest on green on Newgate Lane East, allowing traffic to proceed unimpeded on the main arm. Secondly, this approach reduces the likelihood of drivers, who wrongly anticipate that the lights will turn from red to green on their approach,

- proceeding without slowing and colliding with others. In light of the HA's established approach, I give little weight to the appellants' suggestion.
47. I consider that the proposals, which would not include separate signalisation of the right-hand turn, would conflict with CD 123.
48. The operation of the existing priority junction involves some drivers turning right from Newgate Lane East into Newgate Lane across a single northbound lane and there is no dispute that at present the junction operates safely. However, the proposed junction arrangement would give rise to the possibility of right turning vehicles gap-seeking across 2 opposing lanes, a practice which the HA considers would be unsafe. I note that Rule 180 of the *Highway Code* indicates that right turning drivers should wait for a safe gap in oncoming traffic. However, the basis of the HA's concern is that a right turning driver may not be able to see an oncoming nearside northbound vehicle, due to screening by offside northbound vehicles, until it is too late to avoid a conflict. The Rule 180 illustration is of a single opposing lane and it does not grapple with the potential for unsighted vehicles in a two opposing lanes scenario. In support of its concern, the HA has identified other junctions where the frequency of accidents involving right turning vehicles has been reduced by moving from a situation where gap-seeking across 2 lanes is allowed to a fully signalised right turn phase.
49. With respect to the modified junctions drawn to my attention by the HA, I agree with the appellants that, in the absence of data with respect to traffic flows, speeds and percentage of right turners at those other junctions, it cannot be determined that they are directly comparable to the appeal junction in those respects. However, nor can it be determined that they are not. Nonetheless, the improved accident record at those other junctions following the introduction of a fully signalised right turn phase appears to me to support, for the most part, the HA assessment that the practice of gap-seeking across 2 lanes was previously a contributory factor to the incidence of accidents<sup>5</sup>. In relation to this matter, I give greater weight to the assessment of the HA, as it is likely to be more familiar with the historic operation of its network, than that of the appellants' highway witnesses.
50. The appellants consider that an arrangement which allows vehicles turning right across two opposing lanes by gap-seeking is common. In support of that view, they have identified 2 junctions in the area where the HA has not prevented right turning vehicles from crossing 2 lanes without signalling: A27/Ranvilles Lane; and, A27/Sandringham Road. However, the HA has indicated that there is a history of accidents associated with right turn manoeuvres at the A27/Ranvilles Lane junction, the most recent having occurred in 2020, and the junction will be taken forward on the HA's provisional list for safety remedial measures during 2021/2022. The A27/Sandringham Road junction is located close to the point at which the speed limit reduces from 40 mph to 30 mph on the A27. Furthermore, Sandringham Road is a cul-de-sac serving far fewer dwellings than would be the case at Newgate Lane as a result of either of the appeal A or B schemes, and so the number of daily or peak hour right turning movements associated with it would be likely to be much lower than the appeal junction. To my mind, the circumstances associated with these two junctions do not lend support to the appeal schemes.

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<sup>5</sup> Whether a 3-year or 10-year accident record period is considered.

51. The appellants argue that in circumstances where a vehicle is waiting at the proposed junction for an approaching northbound offside vehicle to pass before turning right onto Newgate Lane, it is likely that a nearside vehicle screened from view by that offside vehicle would also have passed when the waiting vehicle starts to cross the lanes. To my mind, that would not necessarily be the case, as it would depend on the degree to which the pair of northbound vehicles are staggered and their relative speeds. Some screened vehicles may be slowing to turn left into Newgate Lane causing a right turning vehicle to pause in the offside lane when that previously screened nearside vehicle comes into view and that would potentially bring it into conflict with other approaching offside vehicles. Furthermore, it is foreseeable that right turning drivers seeking gaps may be faced with a stream of traffic in both opposing lanes and with some variation in approach speeds. A nearside vehicle moving past an offside stream of traffic may be unsighted until a late stage and may be closing the gap faster than the right turning driver had anticipated, leading to conflicting movements.
52. With reference to the appellants' *Transport Assessment Technical Note-Junction Modelling Results (TATN)*, by the 2024 design year, the cumulative impact of each appeal scheme and other developments would be likely to result in a marked increase in the total number of right turning vehicles into Newgate Lane. Furthermore, the appellants' traffic modelling predicts that in the AM peak there would not be any suitable gaps in free-flowing northbound traffic for right turning vehicles to cross. However, the proposed signalling arrangement would not prevent drivers from gap-seeking and they may still attempt to do so, if they thought that they could get across, rather than waiting for the intergreen period or the indicative arrow. The modelling predicts that in the PM peak almost all of the right turning traffic would cross in gaps in free-flowing northbound traffic.
53. Against this background, I share the concern of the HA that right turning vehicles gap-seeking to cross 2 oncoming lanes at the proposed junction poses a far greater risk of collisions than the existing arrangement and a significant risk to highway safety.
54. I conclude that the proposed junction arrangement, whether one or both of the appeal schemes were to proceed, would have an unacceptable impact on highway safety. Furthermore, in my view, this harm could not be reduced to an acceptable level through the imposition of a condition(s). As I have indicated, the Council and appellants agree that a fully signalised right turn stage would operate unacceptably in terms of capacity. The proposals would conflict with LP2 Policy DSP40(v), which seeks to ensure that development would not have any unacceptable traffic implications, and it would not fit well with the aims of LP1 Policy CS5(3) insofar as it supports development which does not adversely affect the safety of the local road network. These Policies are consistent with the Framework, which indicates that development should only be prevented or refused on highway grounds in limited circumstances, including if there would be an unacceptable impact on highway safety. This weighs very heavily against the schemes.

***Sustainably located, with reference to accessibility***

55. LP1 Policy CS15 indicates that the Council will promote and secure sustainable development by directing development to locations with sustainable transport

- options. LP1 Policy CS5 indicates that development proposals which generate significant demand for travel and/or are of high density, will be located in accessible (includes access to shops, jobs, services and community facilities as well as public transport) areas that are or will be served by good quality public transport, walking and cycling facilities. LP2 Policy DSP40(ii) seeks to ensure that proposals are sustainably located adjacent to the existing urban settlement boundaries.
56. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and identifies that this should be taken into account in decision-making. I acknowledge that the appeal sites are in the countryside. However, they are situated in a relatively narrow countryside gap between urban areas, rather than a larger rural area where opportunities for sustainable transport could reasonably be expected to be limited. In any event, consistent with Development Plan Policies CS15, CS5 and DSP40, the Framework also indicates that significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
57. The appeal sites are not near to, but are set well apart from: the western, urban area boundary of Bridgemary, as defined by the *Gosport Borough Local Plan 2011-2029 Policies Map*, which is to the east of the appeal sites on the far side of an area of agricultural land that adjoins the eastern side of Newgate Lane East; and, further from the southern settlement boundary of Fareham, which is defined by the LP2 Policies Map Booklet and is located some distance further north at the edge of HMS Collingwood and Speedfields Park. Peel Common does not have a defined urban settlement boundary. As such, I consider that the sites are not adjacent to any existing urban settlement boundary, contrary to the requirement of LP2 Policy DSP40(ii).
58. I acknowledge that the Council appears to have taken a flexible approach to the 'adjacency' requirement in a number of other cases. However, in the cases drawn to my attention, with the exception of the site to the south of Funtley Road, development has taken place or been approved between the application site and the nearest existing urban settlement boundary. In the case of the site to the south of Funtley Road, it abuts a highway on the opposite side of which is some of that other development and the site boundary is a relatively short distance across undeveloped land from an existing urban settlement boundary. The circumstances are not directly comparable to those in the cases before me, in relation to which the sites would be set further apart across undeveloped land from the nearest existing urban settlement boundary. In any event, each case must be considered primarily on its own merits and in my view, the Council's approach elsewhere would not justify harmful development of the appeal sites. I give little weight to those decisions of the Council. Furthermore, appeal decision Ref. APP/L3625/X/16/3165616 considered adjacency in the context of the relationship between a highway and gates set back from it by around 1 metre. The circumstances are not comparable to those in the cases before me and are of little assistance.
59. I turn then to consider the accessibility of the sites with reference to modes of transport. The *National Travel Survey, 2019* (NTS), identifies, amongst other things, the average trip length and duration in England by all modes of travel for the trip purposes of: commuting; education; personal business; shopping; sport (participate); and, entertainment/public activity. There are a range of

- employment, education, retail, health, sport, and leisure uses well within those average distances and durations of the appeal sites. This indicates that there are likely to be some opportunities for residents of the proposed developments to travel less when compared to the national average journey distances and durations, and in this context, the locations of the appeal sites limit the need to travel. However, the NTS 'all modes of travel' includes, amongst other modes, car travel and so it does not automatically follow that the proposed developments would be served by good quality public transport, walking or cycling facilities.
60. The *Manual for Streets* indicates that walkable neighbourhoods are typically characterised by having a range of facilities within around 800 metres walking distances of residential areas which residents may access comfortably on foot. However, it indicates that this is not an upper limit and walking offers the greatest potential to replace short car trips, particularly those under 2 kilometres. This is echoed by the Department for Transport *Local Cycling and Walking Infrastructure Plans (2017)*, which indicates that for walking, 'the distances travelled are generally...up to 2 kilometres'.
61. The Institute of Highways and Transportation's (now CIHT) *Guidelines for Providing for Journeys on Foot, (2000)* (PfJoF) gives more detailed guidance, setting out, with reference to some common facilities, suggested desirable, acceptable and preferred maximum walking distances which range up to a preferred maximum of 2 kilometres for some facilities. The approach is consistent with CIHT's more recent *Planning for Walking, April 2015* (PFW), which indicates that most people will only walk if their destination is less than a mile away (equivalent to around 1.6 kilometres) and about 80% of journeys shorter than 1 mile are made wholly on foot, the power of a destination determining how far people will walk to get to it. To illustrate the point it indicates that while for bus stops in residential areas, 400 metres has traditionally been regarded as a cut-off point, people will walk up to 800 metres to get to a railway station, which reflects the greater perceived quality or importance of rail services.
62. Having regard to the Department for Transport's NTS (Table NTS0303-2020 update), there have been no significant changes in the average walking trip length in the period 2002-2019. To my mind, this indicates it is unlikely that attitudes towards walking trip length have altered to any great extent since the publication of PfJoF. This is consistent with the position taken by my colleague who dealt with appeal Ref. APP/A1720/W/19/3230015, which related to a site elsewhere, in Portchester. I am content therefore, that the PfJoF guidance on acceptable walking distances is not out of date and it provides a reasonable basis for the assessment of whether, having regard to the locations of the appeal sites, walking can be regarded as a genuine choice of transport modes. In addition, PFW indicates that propensity to walk is not only influenced by distance, but also by the quality of the experience, having regard to factors such as the attractiveness and safety of the route.
63. I note that the Council's position regarding the accessibility of the sites is not based on an objection in relation to that matter raised by the Highway Authority, but rather an assessment undertaken by a planning professional with reference to PfJoF, amongst other things. In my view, it does not follow that the weight attributable to the Council's assessment should be reduced. As reported by the appellants, the PfJoF states it is the task of the professional

- planner or engineer to decide if a lower standard is acceptable in given circumstances.
64. There is no dispute that there are a range of services and facilities within 2 kilometres of the appeal sites. However, to my mind, in the absence of any consideration of the 'power of the destinations' and the quality of the experience that is of little assistance. Applying the PfJoF approach, which reflects the 'power of destination', facilities and amenities within its 'acceptable' walking distances of the southern and linked appeal sites are limited to a primary school, a church, and a recreation ground. Within its 'preferred maximum' walking distances there are additionally a college campus (CEMAST), a limited number of small shops and a pub in Bridgemary, an employment area (HMS Collingwood) and four other schools.
65. However, the appeal sites only fall within the catchment area of one of the five schools, Crofton Secondary School, which is barely within the preferred maximum walking distance. Whilst I understand that Crofton Anne Dale Infant and Junior School, which would serve the appeal sites, is within the maximum walking distances for schools identified by the Department for Education, it falls outside the PfJoF preferred maximum walking distances.
66. Although PFW indicates that in residential areas, 400 metres has traditionally been regarded as a cut-off point, the CIHT's more recent *Buses in Urban Developments, January 2018* (BUD) provides more detailed guidance. It identifies maximum walking distances between developments and bus stops with the intention of enabling the bus to compete effectively with the car and to benefit a wide range of people with differing levels of motivation and walking ability. It recommends a maximum walking distance of 300 metres to a bus stop served by a service which is less frequent than every 12 minutes.
67. The SoCGT indicates that the closest bus stop to the appeal sites is on Newgate Lane East and only the southern site would meet that BUD recommendation. Furthermore, the buses return approximately with a frequency of every 75 minutes in each direction and the first northbound bus in the morning, towards Fareham, departs from the bus stop at 09:12 hrs. Notwithstanding that the bus trip duration to the train station may be shorter than the national average trip time by local bus of 36 minutes, to my mind, the start time and frequency of the service would limit the attractiveness of the service as far as northbound commuters are concerned. Whilst there is a bus stop on Tukes Avenue served by a more frequent service, it is significantly further away from the sites than the maximum walking distance for high frequency services recommended by BUD.
68. The SoCGT indicates that the closer of the 2 appeal sites is some 3.7 kilometres from Fareham Railway Station, a distance well beyond the 800 metres identified by PFW.
69. I note that the PfJoF was one of the documents that informed the accessibility standards set out in the Council's *Fareham Local Plan 2037 Background Paper: Accessibility Study 2018*, the application of which in the cases before me appears not to result in a significant difference in outcome compared with the application of the PfJoF guidance.
70. The appellants have applied a Walking Route Audit Tool to the local walking routes, which assesses the attractiveness, comfort, directness, safety, and

coherence of the routes. Whilst a number of the findings are disputed by the Council, I consider that the current condition of the likely route east of the sites to the limited number of shops and the pub referred to in Bridgemaury is of greatest concern. That walking route would involve crossing Newgate Lane East and walking along Brookers Lane. However, difficulties crossing Newgate Lane East, due to the speed and volume of traffic, would be satisfactorily addressed by the proposed provision of a Toucan crossing, funded by a contribution secured by the UUB. Currently, the character of the initial section of Brookers Lane would be likely to dissuade users, due to a lack of street lighting and the potential for people to conceal themselves from view from approaching walkers in trees along the southern side of the route, giving rise to potential safety concerns. However, I consider that these matters could be satisfactorily addressed through the provision of unobtrusive lighting and fencing along the southern side of the route, which would be unlikely to have a material adverse impact on the character or appearance of the locality and could be secured by condition. I acknowledge that these improvements may be of some benefit to the wider community, not just residents of the appeal sites, to which I attribute limited weight.

71. In my judgement, the quality of local walking routes could be made acceptable. However, applying the PfJoF and more recent BUD guidance on walking distances to destinations, the number and range of facilities and amenities within the ranges identified would be limited. I consider overall that the accessibility of the area by walking would be poor and, for the most part, walking cannot be regarded as a genuine choice of transport mode.
72. The site subject of previous appeal decision Ref. APP/A1720/W/19/3230015, was found to satisfy LP2 Policy DSP40(ii). However, the factors taken into consideration in relation to that matter included, amongst other things, that the site was well related to the existing urban settlement boundary for Portchester and close to many other dwellings in Portchester, and accessibility to local services and facilities would be similar to that for many of the existing residents of the area. Those circumstances are not directly comparable to those in the cases before me. The appeal sites are not well related to an existing urban settlement boundary or close to dwellings within one. Whilst accessibility to local services and facilities would be similar for existing residents of Peel Common, it is a small settlement relative to which each of the appeal schemes would be larger in terms of households. Under the circumstances, I consider that the policy finding of the previous appeal decision is of little assistance in these cases.
73. Within 5 kilometres of the appeal sites, which is a distance commonly regraded as reasonable cycling distance, there is a much greater range and number of services, facilities, amenities, and employment sites. Furthermore, there are shared cycle pedestrian/cycle routes in the vicinity of the appeal sites which would facilitate access by bicycle to the areas to the north, south, east, and west of the sites. I consider therefore that the sites would be served by good quality cycling facilities and cycling could be regarded as a genuine choice of transport modes. However, having regard to the NTS for 2019, in comparison with 250 trips per person per year associated with walking, only 16 trips per person per year were associated with cycling. To my mind, it is likely therefore, that relatively few future residents of the appeal sites would cycle, reducing the weight attributable to this factor.

74. As I have indicated, the bus services available within the maximum walking distances recommended by BUD are very limited and the nearest train station is located well outside the PfJoF preferred maximum walking distance. I acknowledge that the sites would be within reasonable cycling distances of Fareham Train Station and residents could drive there by car. Nonetheless, I consider overall that the sites would not be well served by good quality public transport, the accessibility of the area by public transport would be poor and, for the most part, it cannot be regarded as a genuine choice of transport modes.
75. The Framework indicates that in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be-or have been-taken up, given the type of development and its location. A Travel Plan for each site has been agreed by the HA. However, in my view, it does not automatically follow that the appeal sites would be sustainably located with reference to accessibility. The *Planning Practice Guidance* (PPG) indicates that the primary purpose of a Travel Plan is to identify opportunities for effective promotion and delivery of sustainable transport initiatives, for example walking, cycling, public transport and tele-commuting, in connection with both proposed and existing developments and through this to thereby reduce the demand for travel by less sustainable modes.
76. The proposed Travel Plan measures include, amongst other things, the provision of: information to promote sustainable modes of travel; electric vehicle charging/parking facilities on the sites; a Travel Plan Coordinator as well as contributions towards: the improvement of the Newgate Lane East crossing at Woodcote Lane/Brookers Lane; the provision of shared pedestrian/cyclist infrastructure along parts of the routes between the appeal sites and local schools; and, supporting the use (travel vouchers for residents) and operation of the existing limited bus service in the vicinity of the sites for a number of years. Having regard to these matters, I am satisfied that a number of appropriate opportunities to promote sustainable transport modes have been provided for, in accordance with the aims of LP1 Policy CS15 and the Framework. However, as identified above, I consider that the attractiveness of the existing bus service to commuters would be limited and, in my view, this casts significant doubt over the indicative Travel Plan target which anticipates an increase in bus service use, notwithstanding some provision for travel vouchers.
77. I conclude that the appeal sites would be in a location with some, albeit limited, sustainable transport options and in this respect would accord with LP1 Policy CS15. However, the limitations are such that they would not be in an accessible area, with particular reference to public transport and walking facilities, and I do not regard the sites as being sustainably located adjacent to an existing urban settlement boundary. Insofar as they seek to ensure that development is sustainably located with reference to accessibility, I consider overall that the proposals would conflict with LP1 Policy CS5, LP2 Policy DSP40 and the Framework.

### ***Spatial development strategy***

78. The reasoned justification for LP1 Policy CS22 indicates that gaps between settlements help define and maintain the separate identity of individual

- settlements. It states that Strategic Gaps do not have intrinsic landscape value but are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green infrastructure/green corridors. The Policy indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
79. The appellants place some reliance on the proposed allocation of land for development in the Fareham-Stubbington Gap in the Regulation 18 consultation draft of the emerging *Fareham Local Plan 2036* (LPe). This included allocation HA2 for residential development on land between Newgate Lane East and Bridgemary, within the Fareham-Stubbington Gap. Whilst the Regulation 19 draft of the LPe did not include that allocation, it was based on the assumed imposition of Government's proposals to introduce a new Standard Method, which was not subsequently supported. However, going forward, there is no certainty that the proposed allocation of HA2 will be reinstated by the Council. Furthermore, even if it were, that proposed allocation was the subject of objections at the earlier stage and there is no dispute that the emerging plan is at a relatively early stage towards adoption. Under the circumstances, I give little weight to the possibility that proposed allocation HA2 would form part of the LPe when adopted.
80. The appeal sites fall within the Fareham-Stubbington Gap. The TR indicates that the purpose of this gap is to avoid coalescence between the settlements of Fareham and Bridgemary with Stubbington and Lee-on-the-Solent. Drawing a straight line east-west across the gap between Stubbington and Bridgemary, the appellants have estimated that the appeal schemes would reduce the gap from some 1.6 km to around 1.1 km. However, to my mind, that cross-country approach does not represent the manner in which the gap is likely to be experienced and, as a result, generally understood.
81. Consistent with the TR, I consider that a key vehicle route between the settlements of Fareham and Stubbington from which the Strategic Gap is experienced is along Newgate Lane East (between Fareham and Peel Common Roundabout)/B3334 Gosport Road (between Peel Common Roundabout and Marks Road, Stubbington). Along that route travellers leave behind the urban landscape of Fareham at HMS Collingwood and Speedfields Park and travel to the edge of Stubbington, via Peel Common Roundabout, through an area which includes the appeal sites and is predominantly characterised by undeveloped countryside. The Strategic Gap designation washes over some development, which includes Newlands' Solar Farm, Peel Common Wastewater Treatment Works (WWTW) and the settlement of Peel Common. However, along the route identified, intervening planting prevents the WWTW from being seen and limits views of the low-profile solar farm to glimpses. Furthermore, I consider that, when seen from those highways to the east and south, 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.
82. In each case, the proposals would involve substantial development to the east of Peel Common and, as identified above, it would be sufficient to tip the balance of the character of the area between Peel Common, Bridgemary and Fareham from predominantly rural to suburban. Whilst Fareham, Peel Common and Bridgemary would remain physically separate, the contribution of this area

to the sense of separation provided by the Strategic Gap would be greatly diminished. I acknowledge that the proposals would not materially alter the experience of the Strategic Gap along the B3334 Gosport Road, between Peel Common and development at Marks Road, as they would not be visible from there. However, the appellants have estimated that 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 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.

83. I consider overall that the proposals would cause significant harm to the integrity of the Fareham-Stubbington Gap and the physical and visual separation of settlements, with particular reference to the experience of travellers along the Newgate Lane East section of the Newgate Lane East/B3334 Gosport Road key route, contrary to the aims of LP1 Policy CS22.
84. Furthermore, in my judgement, the impact on the integrity of the Strategic 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 an existing urban settlement boundary and Peel Common were to remain a small, isolated ribbon of development within the gap. The proposals would fail to minimise any adverse impact on the Strategic Gap, contrary to the aim of LP2 Policy DSP40(iii).
85. There is no dispute that the proposals would accord with criterion (i) of LP2 Policy DSP40, being relative in scale to the demonstrated five-year housing land supply shortfall. Turning then to criterion iv), which requires a demonstration that the proposals would be deliverable in the short term. The current tenant of appeal site A has suggested that the formal procedures associated with the surrender of the agricultural tenancy may delay implementation of that scheme. However, based on the timeline and formal procedures for obtaining possession outlined by the appellants, it appears to me that delivery in the short term would be possible<sup>6</sup>. In any event, this matter could be satisfactorily addressed, in relation to both sites, through imposition of conditions that required reserved matters applications to be made within 12 months of the grant of planning permission and the commencement of development within 12 months of the approval of reserved matters, as suggested by the appellants. Under the circumstances, I am satisfied that the proposals would not conflict with criterion iv) of LP2 Policy DSP40. Nonetheless, they would conflict with criteria ii), iii) and v) and I consider overall that each proposal would conflict with LP2 Policy DSP40 taken as a whole.
86. I conclude that each of the schemes, which would conflict LP1 Policy CS22 and LP2 Policy DSP40, would not accord with and would undermine the Council's Spatial Development Strategy.

### ***Housing land supply***

87. The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated

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<sup>6</sup> Michelmores LLP letter dated 20 January 2021 and Lester Aldridge LLP letter dated 3 February 2021.

against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum. Furthermore, having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period. As I have indicated, the Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply. However, they agree on either basis that the shortfall is material and it is not necessary to conclude on the precise extent.

88. A significant proportion of the difference between the supply figures of the Council and the appellants is associated with applications with a resolution to grant planning permission (709 units) and allocations (556 units).
89. In respect of the majority of the sites with resolutions to grant planning permission, which date from 2018, it remains necessary, before planning permission could be granted in each case, for the Council to complete Appropriate Assessment (AA) to establish whether the scheme would have a significant effect upon European Protected Sites. To inform the AA, it is necessary for the developers to demonstrate that their schemes would not increase the levels of nitrates entering the Solent. In order to facilitate that process, in September 2020, the Council established a legal framework through which developers/applicants can purchase nitrate credits associated with land use at Little Duxmore Farm (LDF). However, at the Inquiry, the Council was unsure whether there would be sufficient capacity at LDF to provide mitigation in relation to all the identified sites and whilst it is seeking to secure additional capacity elsewhere, the associated negotiations are not yet complete. Furthermore, since September 2020, only a relatively small number of dwellings have been taken through this process culminating in the grant of planning permission. With respect to the other sites, which together account for over 500 units, I consider that in the absence of favourably completed AAs there is significant doubt about the deliverability of housing within the five-year period on those sites. Furthermore, AA is not the only issue. In a number of the cases, while some progress has been made, necessary planning obligations have yet to be formally secured. This adds to the uncertainty.
90. The Welborne allocation accounts for 450 units included in the Council's assumed supply figure. The site was subject to a resolution to grant outline planning permission for up to 600 dwellings in October 2019, subject to planning obligations being secured. Although the Council expected the planning obligations to be secured pursuant to section 106 of the *Town and Country Planning Act 1990* by the end of the summer 2020, this was not achieved. In December 2020, the developer submitted amended plans for the site. Whilst in January 2021, the Council resolved to grant planning permission for the revised scheme, it would also be subject to planning obligations and a pre-commencement condition would be imposed to ensure that funding had been secured for the improvement of junction 10 of the M27. At the Inquiry, the Council confirmed that whilst funding sources have been identified, not all the necessary agreements are in place to secure the funds. In light of the limited progress made since October 2019 and the outstanding areas of

uncertainty, I consider it likely that housing delivery on that site within the five-year period will fall well short of that assumed by the Council.

91. Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic<sup>7</sup>.
92. The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come.
93. The appellants anticipate that around 123 of the 190 proposed appeal dwellings could be completed within the current five-year period. Against this background, I consider it likely that each of the appeal schemes would make a modest contribution towards reducing the significant shortfall in housing land supply. Having had regard to other appeal decisions drawn to my attention<sup>8</sup>, I give those contributions substantial weight.

### **Other matters**

#### *Planning obligations*

94. Each of the schemes is supported by a formally completed unilateral undertaking: appeal site A-UUA; and appeal site B-UUB. Amongst other things, they include provisions for: a Solent Recreation Mitigation Strategy contribution; on-site open space and play area provision and maintenance contributions; an education contribution; provisions to secure on-site Affordable Housing delivery, sustainable travel measures as well as the implementation of a Travel Plan. UUB also makes provision for: the implementation of a Chamomile Management Plan, for the purpose of conserving the ecological features in the Chamomile and Meadow areas of the site, consistent with the aims of LP2 Policy DSP13; and, a Toucan crossing contribution. Having had regard to the Council's *Community Infrastructure Levy Regulations Compliance Statement, February 2021*, I consider that the UUs would accord with the provisions of Regulation 122 of the *Community Infrastructure Regulations 2010* and the tests of obligations set out in the Framework. Furthermore, I conclude that the infrastructure provisions referred to above would accord with the aims of LP1 Policy CS20.
95. With reference to the ecological assessments submitted in support of the applications, the appellants have indicated that, subject to mitigation measures which would be secured either by the submitted UU's or by condition, the schemes would each provide moderate ecological benefits for the sites, consistent with LP1 Policy CS4 and LP2 Policy DSP13. Furthermore, measures would be incorporated in the design of the schemes to limit energy and water consumption as well as carbon dioxide emissions, which could be secured by condition and would amount to minor environmental benefits, consistent with

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<sup>7</sup> Statements of Common Ground, January 2021 (paragraphs 7.14).

<sup>8</sup> Such as APP/A1530/W/19/3223010, APP/G1630/W/18/3210903, APP/E5900/W/19/3225474, APP/N1730/W/18/3204011 and APP/G1630/17/3184272.

LP1 Policy CS16. I have no compelling reason to take a different view. However, in my judgement, they do not weigh significantly in favour of the schemes, as the benefits would be only moderate/minor and the Framework commonly requires the provision of net gains for biodiversity, minimisation of energy consumption and the prudent use of natural resources.

96. UUC would secure off-site mitigation for the loss of a low use Solent Wader and Brent Goose site. Having regard to the measures secured by UUA, UUB and UUC and with reference to the 'Shadow Habitat Regulations Assessments' submitted in support of the applications, the appellants have indicated that the proposals would not have an adverse effect on the integrity of any European Protected Sites, consistent with the aims of LP2 Policies DSP14 and DSP15, and this would weigh as neutral in the planning balance. These matters are not disputed by the Council.
97. It is common ground that there is an unmet Affordable Housing need in Fareham Borough. The shortfall appears to be sizeable. Looking forward, the Council's adopted *Affordable Housing Strategy (2019)* identifies a need for broadly 220 Affordable Homes per annum over the period to 2036. This can be compared to the delivery of an average of 76 Affordable Homes per annum in the period 2011-2019, well below the need identified for that period by the Council's *Housing Evidence: Overview Report (2017)*. 40% of the proposed dwellings in each case would comprise Affordable Housing, consistent with the requirements of LP1 Policy CS18. Furthermore, I understand that the commercial profits of Bargate Homes Ltd, which is owned by Vivid and has contractual control of both sites, are reinvested in Vivid's wider Affordable Housing Programme. I consider that the proposals would amount to meaningful contributions towards addressing the identified need and the Affordable Housing benefits attract substantial weight in each case.
98. The Council considers that the public open space provision shown on the illustrative masterplans submitted in support of the applications would be sufficient to meet the requirements of LP1 Policy CS21 and I have no reason to disagree. Whilst I acknowledge that the proposed public open space may be of some value to existing local residents, given the accessibility of the countryside thereabouts, I consider that any benefit in that regard would be small and I give it little weight.

*Economic benefits*

99. The Framework gives encouragement to development that would support economic growth. The proposals would be likely to give rise to a range of economic benefits. For example, the appellants have estimated that the proposed households would be likely to generate expenditure in the region of £6.4 million per annum, some of which would be spent locally. Furthermore, the proposals could support an estimated 191 jobs during the three-year build programme and could generate an additional £33.8 million of gross value added for the regional economy during that period. The proposals would help to support the growth of the economy, which has been adversely affected by the current coronavirus pandemic. I give the economic benefits likely to result from the proposals in each case substantial weight.

*Best and most versatile agricultural land*

100. Appeal site B contains land classified as best and most versatile (BMV) agricultural land, which would be lost as a result of the scheme, contrary to the aims of LP1 Policy CS16, which seeks to prevent the loss of such land. However, with reference to the Framework, which indicates that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the economic and other benefits of BMV agricultural land, I consider that LP1 Policy CS16 is unduly onerous. Furthermore, as BMV agricultural land makes up only a very small proportion of the site, I share the view of the appellants that the weight to be given to the loss is very limited.

*Privacy*

101. At present, Hambrook Lodge occupies an isolated position in the countryside, set well apart from other dwellings. In this context the proposed developments on land adjacent to that property would be likely to have some effect on the privacy of the existing residents. However, the elevations of the dwelling that contain the majority of its habitable room windows are set back from the boundaries shared with the appeal sites. I consider that it would be possible to ensure, through careful design and layout of the schemes controlled at the reserved matters stage, that reasonable levels of privacy would be maintained in keeping with the aims of LP1 Policy CS17.

*Community services and facilities*

102. I do not share the concerns raised by a number of residents of the Borough of Gosport that the proposals would adversely affect their community services and facilities. As indicated above, it is likely that spending associated with the schemes would benefit the local economy. As regards facilities, I understand that the appeal sites are not within the catchment area of Gosport schools. Whilst some future residents may wish to use the recreation ground situated to the southeast on the other side of Newgate Lane East, there is no compelling evidence before me to show that the numbers would be large or that such activity would be problematic.

***Planning balance***

103. The Framework indicates, with reference to succinct and up-to-date plans, that the planning system should be genuinely plan-led. For decision making this means approving development proposals that accord with an up-to-date Development Plan without delay. The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites and so in these cases the relevant policy for determining the acceptability of residential development on the site is LP2 Policy DSP40. I consider that each of the schemes would conflict overall with LP2 Policy DSP40. However, in these cases, that is not the end of the matter.
104. LP1 Policy CS2 sets out the housing development needs in the plan period, and Policy CS6 establishes the settlements and allocations to deliver development needs. However, Policy CS2, which pre-dated the publication of the Framework, does not purport to represent an up-to-date Framework compliant assessment of housing needs. The housing requirement set out in the Development Plan has not been reviewed within the last 5 years and so the

five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This generates a higher figure. To my mind, it follows that LP1 Policies CS2 and CS6 are out-of-date. Furthermore, against this background, I consider that the weight attributable to conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6, which place strict controls over development outside settlement boundaries, is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements<sup>9</sup>.

105. Furthermore, as the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, under the terms of paragraph 11 of the Framework it follows that the policies which are most important for determining the appeals are deemed out of date. The Framework indicates that decisions should apply a presumption in favour of sustainable development and, where the policies which are most important for determining the application are out of date, this means granting planning permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole; or, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. This approach is reflected in LP2 Policy DSP1.
106. Under these circumstances, I consider that little weight is attributable to the identified conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6. This is reinforced by my earlier finding that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies would be reduced.
107. LP2 Policy DSP40 is also deemed out of date for the purposes of paragraph 11 of the Framework. However, I consider, for a number of reasons, it does not automatically follow that conflicts with this Policy also attract little weight, contrary to the approach of my colleague who dealt with appeal decision Ref. APP/A1720/W/18/3209865.
108. Firstly, the DSP40 contingency seeks to address a situation where there is a five-year housing land supply shortfall, by providing a mechanism for the controlled release of land outside the urban area boundary, within the countryside and Strategic Gaps, through a plan-led approach. I consider that in principle, consistent with the view of my colleague who dealt with appeal Ref. APP/A1720/W/18/3200409, this approach accords with the aims of the Framework.
109. Secondly, consistent with the Framework aim of addressing shortfalls, it requires that (i) the proposal is relative in scale to the demonstrated supply shortfall and (iv) it would be deliverable in the short-term.
110. Thirdly, criteria (ii) and (iii) are also consistent with the Framework insofar as they: recognise the intrinsic character and beauty of the countryside by seeking to minimise any adverse impact on the countryside; promote the creation of high quality places and having regard to the area's defining characteristics, by respecting the pattern and spatial separation of settlements;

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<sup>9</sup> CDK5-Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37, para 63.

and, seek to ensure that development is sustainably located. They represent a relaxation of the requirements of Policies LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6 in favour of housing land supply. However, I consider that the shortfall in the Framework required five-year housing land supply, which has persisted for a number of years and is larger than those before my colleagues<sup>10</sup>, indicates that the balance they strike between those other interests and housing supply may be unduly restrictive. Under these circumstances, in my judgement, considerable, but not full weight is attributable to conflicts with LP2 Policy DSP40(ii) and (iii).

111. Fourthly, insofar as LP2 Policy DSP40(v) seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications, it is consistent with the Framework and conflict with that requirement would be a matter of the greatest weight.
112. Whilst the proposals would accord with criteria i) and iv), they would conflict with criteria ii), iii) and v), causing significant harm to the character and appearance of the area, having an unacceptable effect on highway safety, they would not be sustainably located with reference to accessibility and they would fail to minimise any adverse impact on the Strategic Gap. I have found that the proposals would conflict with LP2 Policy DSP40, undermining the Council's Spatial Development Strategy. I consider overall that these matters weigh very heavily against each of the proposals.
113. In each case the proposals would provide a mix of housing types and styles. They would make meaningful, albeit modest, contributions towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply. The appeal schemes would also be likely to provide employment opportunities and economic benefits to the area. In these respects the proposals would be consistent with the Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support economic growth. I give those benefits substantial weight. I give little weight to other identified benefits, such as the proposed measures to secure net gains for biodiversity, the minimisation of energy consumption and the prudent use of natural resources. Although I give a number of the benefits substantial weight, in my judgement, it would fall well short of the weight attributable to the harm identified.
114. I consider on balance that, in each case, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits and the schemes would not represent sustainable development under the terms of either LP2 Policy DSP1 or the Framework. In light of these findings, it is unnecessary for me to undertake an Appropriate Assessment. However, if I had done so and a positive outcome had ensued, it would not have affected the planning balances or my conclusions on these appeals.

### **Conclusions**

115. Whilst acknowledging that appeal scheme A would conform with some Development Plan policies, I conclude on balance, with particular reference to LP2 Policy DSP40, that the proposal would conflict with the Development Plan taken as a whole. Furthermore, the other material considerations in this case

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<sup>10</sup> APP/A1720/W/18/3199119, APP/A1720/W/18/3200409

would not justify a decision other than in accordance with the Development Plan. For the reasons given above, I conclude that appeal A should be dismissed.

116. Whilst acknowledging that appeal scheme B would conform with some Development Plan policies, I conclude on balance, with particular reference to LP2 Policy DSP40, that the proposal would conflict with the Development Plan taken as a whole. Furthermore, the other material considerations in this case would not justify a decision other than in accordance with the Development Plan. For the reasons given above, I conclude that appeal B should be dismissed.

*I Jenkins*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

**Mr D Lintott**

Of Counsel

He called

**Mr I Dudley**

BSc(Hons) MICFor CEnv CMLI

**Mr C Whitehead**

BEng CEng

**Mr J Mundy**

MSc IMICE

**Mr N Sibbett**

CEcol CMLI CEnv MCIEEM

**Ms J Parker**

BA(Hons) MA MRTPI

**Mr R Wright** (conditions/obligations)

**Mr N Gammer** (conditions/obligations)

MSc MCIHT MTPS

**H Hudson** (conditions/obligations)

Solicitor

Lockhart Garratt Ltd

SYSTRA Ltd

Hampshire County Council

The Landscape Partnership

Adams Hendry Consulting Ltd

Fareham Borough Council

Hampshire County Council

Southampton City Council

### FOR THE APPELLANTS:

**Mr C Boyle**

QC

He called

**Mr J Atkin**

BSc(Hons) DIP LM CMLI

**Mr N Tiley**

ARTPI

**Miss M Hoskins**

BA(Hons) MCIHT

**Mr A Jones**

BSc(Hons) MCIHT

**Mr D West**

MEnv Sci(Hons) CEnv MCIEEM

**Mr D Weaver**

BA(Hons) MA MRTPI

**Mr C Marsh** (conditions/obligations)

Pegasus Group

Pegasus Group

Red Wilson Associates

Pegasus Group

WYG

Pegasus Group

Pegasus Group

### INTERESTED PERSONS:

**County Councillor P Hayre**

The Crofton Division of Fareham

**Mrs A White**

**Mr A Thomas**

**Borough Councillor J Forrest**

The Stubbington Ward

**Mr B Marshall**

**County Councillor S Philpott**

The Bridgemary Division

**Mrs A Roast**

**Borough Councillor C Heneghan**

The Stubbington Ward

Interested party

Local resident

Local resident

Interested party

Fareham Society

Interested party

Lee Residents' Association

Interested party

## DOCUMENTS

- 1 Letters notifying interested parties of appeals A and B.
- 2 Appeals notification responses
- 3 Councillor Philpott-updated proof of evidence
- 4 Ms Parker-revised appendices to proof of evidence and errata
- 5 Council-opening statement
- 6 Appellants-opening statement
- 7 Councillor Forrest-proof of evidence
- 8 Statement of Common Ground (Transport)
- 9 Fareham Society-updated proof of evidence
- 10 Councillor Philpott-updated proof of evidence
- 11 Mr Thomas-email dated 10 February 2021
- 12 Red Wilson Associates-Delay Tables Summary Note
- 13 Mr Thomas-email dated 11 February 2021
- 14 Gosport Borough Council-Additional submissions regarding the Newgate Lane South Appeals (12 February 2021)
- 15 Community Infrastructure Levy Regulations Compliance Statement (including education contributions email dated 9 November 2020 and Planning Obligations Supplementary Planning Document
- 16 Bargate Homes-Delivery Rate Update, dated 16 February 2021
- 17a Composite masterplan
- 17b Settlement boundaries proximity plan
- 17c Land south of Funtley Road Committee Report Ref. P/18/0067/OA
- 17d Consolidated conditions schedule
- 18 Mrs White-proof of evidence
- 19 Natural England guidance documents and Conservation Objectives.
- 20 Gosport Borough Council-Additional submissions regarding the Newgate Lane South Appeals (12 February 2021)-references included.
- 21 Land south of Funtley Road Committee Report Ref. P/18/0067/OA, dated 18/07/2018.
- 22 Ms Parker- response to Inquiry document 16
- 23 Council's letter withdrawing reason for refusal (h)-appeal A and (G)-appeal B insofar as they relate to the capacity of the junction of old Newgate Lane/Newgate Lane East
- 24 Fareham Society-proof of evidence summary
- 25 Ms Hoskins-Linsig model results, junction layouts note and extract from the Highway Code
- 26 Highway Authority-Note dated 18 February 2021 regarding highway capacity point raised by Gosport Borough Council
- 27 Councillor Philpott-supplementary notes
- 28 Councillor Hayre-proof of evidence
- 29a Mrs White-proof of evidence summary
- 29b Mrs Roast-proof of evidence summary
- 30 Updated Report to inform HRA Stage 1 and Stage 2
- 31 Plan-Gosport Road Fareham Air Quality Management Area 2017 (A)
- 32 Gosport Borough Council Ward Maps-Peel Common and Bridgemary North

- 33 Pegasus-1) Traffic Flows at the old Newgate Lane and Newgate Lane East Junction and 2) 21 and 21A Bus Service
- 34 Birds Unilateral Undertaking-update
- 35 Appeal A-Main Unilateral Undertaking
- 36 Highway Authority-Note in response to new information provided by the appellants under cross examination of Ms Hoskins, Ms Parker-note on settlement terminology and Mr Gammer-updated proofs of evidence.
- 37 Councillor Philpott-email dated 19 February 2021, air quality clarification
- 38 Tetra Tech-Note on Winter Bird Mitigation Area Nitrogen Budget, 23 February 2021
- 39 Council-email dated 23 February 2021, consultation responses
- 40 Council/appellants-Consolidated Conditions Schedule
- 41 Council-Boundary plans related to Brookers Lane
- 42 Pegasus-Newgate Lane East Capacity note
- 43 Ms Parker-Status and weight of Local Plan Evidence Based Landscape Documents
- 44 Mr Sibbett-Note on qualifying features
- 45 Fareham Society-closing statement
- 46 Highway Authority-Note addressing queries relating to the southern site Unilateral Undertaking
- 47 Planning Inspectorate-contaminated land model conditions
- 48 Councillor Heneghan-consultation response, dated 29 October 2018
- 49 Lee Residents Association-Closing statement
- 50a Council/appellants-additional conditions
- 50b Pegasus-scale and density note
- 51 Councillor Heneghan-proof of evidence
- 52a The Civil Engineering Practice-Technical Note on Flood Risk and Discharge Restriction
- 52b Appeal A-Main Unilateral Undertaking-tracked changes
- 53 Pegasus note-Ownership and status of the Brookers Lane shared footway/cycleway between Newgate Lane East and Bridgemary
- 54 Ms Parker-Further advice on the consultation responses to the Fareham Landscape Assessment (FLA)(2017)(CDG15)
- 55 Tetra Tech-Report to inform Habitats Regulations Assessment Stage 1 and stage 2-updated
- 56 Acon Uk-Air Quality note
- 57 Birds Unilateral Undertaking-update (tracked changes)
- 58 Council-closing statement
- 59 Council-email confirmation, dated 25 February 2021, of the red line site boundary drawing numbers for the applications
- 60 Birds Unilateral Undertaking-update
- 61 Appellants-closing statement
- 62 Formally completed unilateral undertakings

**Land South of Romsey Avenue, Portchester**

**PINS Ref: APP/A1720/W/21/3271412 (LPA Ref: 18/1073/FP)**

**Statement of Common Ground: Five Year Housing Land Supply**

*8<sup>th</sup> July 2021*

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**1. Introduction**

- 1.1. This Housing Land Supply (“HLS”) Statement of Common Ground (“SoCG”) has been prepared by Mr Steven Brown (of Wolf Bond Planning), on behalf of the Appellant, Foreman Homes Ltd and Richard Wright on behalf of Fareham Borough Council. It sets out both the agreed and disputed matters having regard to the five year housing land supply position.
- 1.2. This HLS SoCG identifies the requirement to be met during the five year period, the deliverability of the identified components of supply; and the subsequent five year housing land supply positions of the respective parties.

**2. The Agreed Position**

- 2.1. It is common ground that the Council is not able to demonstrate a five year supply of deliverable housing land against the minimum five year requirement for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 2.2. As such, it is common ground that the Council is not meeting paragraph 59 of the NPPF and, by virtue of footnote 7, paragraph 11(d) is engaged unless disapplied by virtue of paragraph 177.
- 2.3. The shortfall will only be rectified if planning approval is given for housing on sites not originally envisaged for housing in the adopted Local Plan Parts 1 and 2 or through plan-led development delivered through the emerging Local Plan.
- 2.4. In the circumstances, the most important, operative policy for determining the acceptability of residential development on the Site is Policy DSP40.

**3. The Housing Requirement and Five Year Period**

- 3.1. It is agreed between the parties that the five year period to be used for the purpose of calculating the five year housing land supply position for this appeal is 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 3.2. In so far as the strategic policies from the Core Strategy and Development Sites and Policies DPD are more than five years old, it is agreed, by operation of paragraph 73 and footnote 37 of the NPPF, that **the housing requirement falls to be measured against the local housing need figure calculated using the standard method.**

- 3.3. A such, the starting point to calculating the five year requirement is the minimum **539 dwelling annual requirement** derived from the application of the Standard Method. This equates to 2,695 dwellings requirement.
- 3.4. However, and as a result of the Housing Delivery Test (“HDT”) results published in February 2021, it is agreed that it is appropriate to apply a 20% buffer to the requirement.
- 3.5. This results in a minimum five year requirement of **3,234 dwellings for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.**

**4. Housing Supply**

- 4.1. The Council maintains it has a five year supply of 2,310 dwellings. This results in a shortfall of 924 dwellings and a supply of 3.57 years.
- 4.2. The Appellant identifies a supply of 600 dwellings. This results in a shortfall of 2,634 dwellings and a supply of only 0.93 years.
- 4.3. The respective positions are summarised in Table 1 below.

*Table 1: Respective Five Year Housing Supply Positions*

	<b>Fareham Borough Council</b>	<b>Appellant</b>
Minimum 5yr Req. 1 Jan 2021 to 31 Dec 2025	3,234	3,234
Deliverable Supply	2,310	600
Extent of Shortfall	-924	-2,634
No. Years Supply	3.57yrs	0.93yrs

- 4.4. The supply differences are set out in **Appendix 1** attached
- 4.5. As set out above, and on either approach, it is agreed that the Council is unable to demonstrate a five year supply of deliverable housing land.

**5. Implications of the Respective Five Year Positions**

- 5.1. The agreed position between the Council and Appellant is that the Council is not able currently to demonstrate a five year supply of deliverable housing land for the period 1st January 2021 to 31st December 2025.
- 5.2. As such, it is common ground between the Council and Appellant that the Council is not meeting paragraph 59 of the NPPF, thus engaging the presumption in favour of sustainable development at paragraph 11(d) of the NPPF unless disapplied by virtue of paragraph 177.
- 5.3. Whilst the Council and Appellant disagree as to the extent of the shortfall, it is nevertheless agreed, on either position, that the shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant. As such it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall.

- 5.4. In the light of the agreement reached between the parties in relation to the significance of the five year housing land supply shortfall, neither party will call their respective witnesses to deal with housing land supply matters unless such evidence is requested by the Inspector. This will save time and resources and will enable a more efficient inquiry process.
- 5.5. This HLS SoCG is signed and dated below.

**Signatures**

On behalf of the Appellant:



Bond Planning obo Foreman

Date: 8<sup>th</sup> July 2021

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## Appendix 1: Site Delivery

The following table sets out the respective positions in relation to the deliverability of the components of supply.

Supply source	Revised Council <sup>1</sup>	WBP	Difference
Outstanding Planning Permissions – Small (104 dwellings) (10% discount)	69	69	0
Outstanding Full Planning Permissions – Large (5+ dwellings)	402	402	0
Outstanding Outline Planning Permissions – Large (5+ dwellings)	296	27 <sup>2</sup>	269
Resolution to Grant Planning Permission – Large (5+ dwellings) (exc Welborne)	742 <sup>3</sup>	0	742
Resolution to Grant Planning Permission – Large (5+ dwellings) (Welborne)	390	0	390
Brownfield Register Sites	276	0	276
Local Plan Adopted Housing Allocations	33	0	33
Windfall	102	102	0
<b>Total</b>	<b>2,310</b>	<b>600</b>	<b>1,710</b>

<sup>1</sup> Supplementary Statement to Newgate Lane East Appeal (3269030)

<sup>2</sup> Sites included in this category by WBP are: Egmont Nurseries, Brook Avenue (8 dwellings); 18 Titchfield Park Road, Titchfield (6 dwellings); east & west of 79 Greenaway Lane (6 Dwellings) and Burridge Lodge (7 dwellings)

<sup>3</sup> Paragraph 5.8 of the Council's Supplementary Statement for Newgate Lane East Appeal indicates that this figure should be 663.

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1 and HP4**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
8. Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015)
9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in land located to the east of Cartwright Drive, Titchfield. The Site has been assessed in the SHELAA as Site Ref: 3184. The site area is approximately 8.13 hectares and has the capacity to accommodate approximately 140 houses.
- 1.2. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore advocate changes to the Local Plan to address this, including the allocation of our client's land to the east of Cartwright Drive, Titchfield.
- 1.3. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
- 1.4. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## **2. REPRESENTATIONS AND SUPPORTING INFORMATION**

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)

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2.2. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
  
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
  
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
  
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
  
- 3.4. To address this requirement for additional homes, we contend that further land should be allocated including the land controlled by our clients east of Cartwright Drive, Locks Heath (SHELAA 2021 site ref 3184). This site can accommodate approximately 140 dwellings (including a policy-compliant level of affordable housing) in a sustainable location.

- 3.5. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities and the allocation of land east of Cartwright Drive, Locks Heath can also supply homes to contribute towards to resolving this issue.
  
- 3.6. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
  
- 3.7. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, FBC has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement as set out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.

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<sup>7</sup> (541 x 18) + 1,000

5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

- 5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.
- 5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

## **Conclusions**

- 5.33. The housing requirement and delivery as set out in Policy H1 cannot be said to be sound as it fails to provide for at least 15 years post adoption together with a failure to plan for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### **Changes sought to the Development Requirements in Policy H1.**

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and like Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;

- c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
- d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.

5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.

1. That policy H1 is amended to:
  - A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need (including our clients land east of Cartwright Drive; and
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
2. That consequential amendments are made to the document to reflect these revisions.

## 6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY

### General

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

- 6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.
- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Portchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.

- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
  - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
  - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
  - d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
  - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
  - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

- 6.10. The Inspector’s conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.
- 6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client’s omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 16**):
- 6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.
- 6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 16** is that the shortfall is much greater than purported to be the case by the Council.
- 6.14. The below Table provides a comparison between the housing land supply position set out in the Council’s Published Report to Committee in February 2021, the Council’s updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 16**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

- 6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.
- 6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

### **Suggested Changes to Policy HP4**

- 6.17. Policy HP4 cannot be said to be sound in respect of the following:
- a) Not positively prepared as the policy (alongside others in the document) will fail to provide an effective solution towards maintaining a five years supply of housing,
  - b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.
- 6.18. To address these matters of soundness, the following amendments is proposed:
- 1. That clause c is omitted from policy HP4.

## **7. OMISSION SITE: FAILURE TO IDENTIFY LAND TO THE EAST OF CARTWRIGHT DRIVE AS A HOUSING ALLOCATION FOR APPROXIMATELY 140 DWELLINGS**

### **General**

- 7.1. Through the other representations submitted to the policies of the Plan, there is a need to allocate additional land for housing development. Having regard to the representations and the earlier promotion of the omission site for residential development, the evidence justifies the allocation of the site for circa 140 dwellings.
- 7.2. The Site is well related to the urban area of Locks Heath and Park Gate. Moreover, the Site affords an extremely sustainable location in helping to meet identified housing needs.
- 7.3. The site was considered suitable for development in the 2020 SHELAA.
- 7.4. However in the 2021 SHELAA it was discounted for development with the reason being 'The site is within landscape identified as of special character for the Borough. Development likely to impact the setting of heritage assets. Development limited to the previously developed land in the north west corner of the site may be acceptable.'
- 7.5. With regards to the first reason, an independent landscape consultant has assessed the site and does not consider that the site offers landscape value of an special merit and, moreover is not visible from many public viewpoints. Notwithstanding, it is proposed to create additional planting on the eastern boundary to provide a strong level of natural screening from views to the east.
- 7.6. Concerning the heritage assets in the vicinity, an independent heritage consultant has reviewed the site and, due to a combination of distance, natural screening and topography development at the site will not be visible within the setting of the nearby listed buildings and conservation area. It is worth noting that the proposed buildings will not exceed 2 storeys in height.

- 7.7. We therefore consider that part of the solution to addressing the identified housing shortfall is to allocate the subject site, Cartwright Drive, for residential development alongside consequential changes to the Policy Map.

### **Change sought to the Local Plan**

- 7.8. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **land east of Cartwright Drive (SHELAA Ref: 3184) should be identified as a housing allocation for circa 140 dwellings, with consequential amendments to settlement boundaries and the other designations, as detailed in other representations.**

## **8. OVERALL CONCLUSIONS**

- 8.1. Our representations have identified a number of concerns with the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
- 8.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.
- 8.3. These matters can be addressed through Main Modifications.

## **9. FINAL REMARKS**

- 9.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 9.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations, including the allocation of our client's site east of Cartwright Drive for approximately 140 dwellings.

- 9.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

## PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:	Mr
First Name:	Steve
Last Name:	Carrington
Job Title: (where relevant)	
Organisation: (where relevant)	Foreman Homes Ltd
Address:	c/o Agent
Postcode:	
Telephone Number:	
Email Address:	

A3 Please provide the Agent's details:

Title:	Mr
First Name:	Steven
Last Name:	Brown
Job Title: (where relevant)	
Organisation: (where relevant)	Woolf Bond Planning
Address:	
Postcode:	
Telephone Number:	
Email Address:	

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1 and HP4**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
8. Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015)
9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in land located to the east of Titchfield Road, Titchfield. The Site has been assessed in the SHELAA as Site Ref: 3059. The site area is 36 hectares and has the capacity to accommodate approximately 720 houses.
- 1.2. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore advocate changes to the Local Plan to address this, including the allocation of our client's land to the east of Titchfield Road, Titchfield.
- 1.3. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
- 1.4. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## **2. REPRESENTATIONS AND SUPPORTING INFORMATION**

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector’s Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector’s Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to ‘The Navigator’, off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)

2.2. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
  
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
  
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
  
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
  
- 3.4. To address this requirement for additional homes, we contend that further land should be allocated including the land controlled by our clients east of Titchfield Road Road, Titchfield (SHELAA 2021 site ref 3059). This site can accommodate approximately 3059 dwellings (including a policy-compliant level of affordable housing) in a sustainable location.

- 3.5. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities and the allocation of land east of Titchfield Road, Locks Heath can also supply homes to contribute towards to resolving this issue.
- 3.6. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
- 3.7. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, FBC has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement as set out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.

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<sup>7</sup> (541 x 18) + 1,000

5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

- 5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.
- 5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

## **Conclusions**

- 5.33. The housing requirement and delivery as set out in Policy H1 cannot be said to be sound as it fails to provide for at least 15 years post adoption together with a failure to plan for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### **Changes sought to the Development Requirements in Policy H1.**

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and like Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;

- c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
- d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.

5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.

1. That policy H1 is amended to:
  - A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need (including our clients land east of Titchfield Road; and
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
2. That consequential amendments are made to the document to reflect these revisions.

## 6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY

### General

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

- 6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.
- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Portchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.

- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
  - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
  - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
  - d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
  - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
  - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

- 6.10. The Inspector’s conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.
- 6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client’s omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 16**):
- 6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.
- 6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 16** is that the shortfall is much greater than purported to be the case by the Council.
- 6.14. The below Table provides a comparison between the housing land supply position set out in the Council’s Published Report to Committee in February 2021, the Council’s updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 16**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

- 6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.
- 6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

### **Suggested Changes to Policy HP4**

- 6.17. Policy HP4 cannot be said to be sound in respect of the following:
- a) Not positively prepared as the policy (alongside others in the document) will fail to provide an effective solution towards maintaining a five years supply of housing,
  - b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.
- 6.18. To address these matters of soundness, the following amendments is proposed:
- 1. That clause c is omitted from policy HP4.

## **7. OMISSION SITE: FAILURE TO IDENTIFY LAND TO THE EAST OF TITCHFIELD ROAD AS A HOUSING ALLOCATION FOR APPROXIMATELY 720 DWELLINGS**

### **General**

- 7.1. Through the other representations submitted to the policies of the Plan, there is a need to allocate additional land for housing development. Having regard to the representations and the earlier promotion of the omission site for residential development, the evidence justifies the allocation of the site for circa 720 dwellings.
- 7.2. The Site is well related to the urban area of Fareham. Moreover, the Site affords an extremely sustainable location in helping to meet identified housing needs.
- 7.3. The site was considered suitable for development in the 2020 SHELAA.
- 7.4. However in the 2021 SHELAA it was discounted for development with the reason being 'Development of scale promoted would not be in keeping with the settlement pattern and does not accord with the development strategy.'
- 7.5. The site is extremely well located to benefit from the Stubbington Bypass, which was granted planning permission in 2015, and is proposed to cut through the site to connect to Titchfield Road.
- 7.6. The Stubbington bypass forms part of Hampshire's wider plan for improving access to Fareham and Gosport and work has already been completed on several other improvement schemes on the wider network. The key points in the context of the site are the widening improvements along Titchfield Road adjacent to the site boundary and the proposals for a cycle route adjacent to the entire length of the Bypass, and Titchfield Road, which will benefit potential future site users
- 7.7.

- 
- 7.8. The existing Local Plan acknowledges that land in strategic gaps does not necessarily have any intrinsic landscape value, it is designated as such in order to maintain a physical gap between settlements.
- 7.9. Fareham Borough Council has identified that the Fareham/Stubbington gap may be one of the least sensitive gap areas and therefore may be appropriate to come forward for development. FBC explains that careful planning could prevent the two settlements from joining up whilst delivering much needed housing and other facilities.
- 7.10. Desktop studies, landscape character studies and site appraisals combined with an assessment of the impact of the bypass has identified areas of landscape sensitivity that can be used to influence potential opportunities for the site to accommodate residential development.
- 7.11. NORTHERN PARCEL (LOW LANDSCAPE SENSITIVITY) – A large parcel to the north of the site is currently well screened by surrounding boundary vegetation, woodland blocks and existing dwellings along the B3334 Titchfield Road which together make this feel well enclosed. Following the road mitigation any sensitive longer distance views into the site are likely to be further prohibited by the tree planting along the bypass. The existing mature vegetation to the north already serves to provide an unclear settlement boundary. The existing properties along the B3334 Titchfield Road introduce development here so the landscape sensitivity to further development is deemed to be low. Any proposed development will need to address retained sensitive views which will be limited to the more open fields within the site to the south and east. This will form the new settlement edge and should seek to integrate any landscape mitigation to help assimilate development that reinforces improved Green Infrastructure.
- 7.12. SOUTHERN PARCEL (LOW LANDSCAPE SENSITIVITY) – The smaller southern parcel, in terms of landscape capacity, will be well suited to development following the construction of the bypass and associated planting. The biggest issues in this area are likely to be noise mitigation from the bypass, Dog Shelter and the required consultation with Natural England on the nearby SSSI. Opportunities to connect to the existing footpath by creating a landscaped park through the development will help to mitigate impacts on the

SSSI as well as providing a meaningful connection via the bypass junction to other local GI network improvements.

7.13. GATEWAY PARCEL (MEDIUM LANDSCAPE SENSITIVITY – Positioned at the convergence of the new bypass and the existing B3334 Titchfield Road we feel that a sensitively designed ‘farmstead style’ development would complement the landscape setting and visually define the western edge of the bypass and gap before travelling north to Titchfield. Set within a generous wooded landscape that would integrate with the adjoining woodland blocks and bypass mitigation planting, the landscape proposals would also help to assimilate the development and screen the utilitarian agricultural buildings. Together this would form a suitable transition between the two landscape character areas.

7.14. CENTRAL PARCEL (HIGH LANDSCAPE SENSITIVITY) / ‘GAP’ AND GREEN INFRASTRUCTURE IMPROVEMENTS – The centre of the site to the north of the proposed bypass is still capable of contributing positively to the landscape character area, and forming a strategic link to the existing public right of way network as part of Fareham BC’s wider aspiration for a GI network stretching from Alver Valley Country Park to the Meon Valley. Measuring nearly 10 hectares the central area, currently used for agriculture could be transformed to create a new country park that will not only protect the gap but will address Fareham and Stubbington’s identified shortfall in natural greenspace. The park will provide recreational routes / connections across the site and to the surrounding footpath / bypass cycle network.

7.15. We therefore consider that part of the solution to addressing the identified housing shortfall is to allocate the subject site at Titchfield Road, for residential development alongside consequential changes to the Policy Map.

### **Change sought to the Local Plan**

7.16. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **land east of Titchfield Road (SHELAA Ref: 3059) should be identified as a housing allocation for circa 720 dwellings, with**

**consequential amendments to settlement boundaries and the other designations, as detailed in other representations.**

## **8. OVERALL CONCLUSIONS**

- 8.1. Our representations have identified a number of concerns with the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
- 8.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.
- 8.3. These matters can be addressed through Main Modifications.

## **9. FINAL REMARKS**

- 9.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 9.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations, including the allocation of our client's site east of Titchfield Road for approximately 720 dwellings.
- 9.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:	Mr
First Name:	Steve
Last Name:	Carrington
Job Title: (where relevant)	
Organisation: (where relevant)	Foreman Homes Ltd
	c/o Agent
Address:	
Postcode:	
Telephone Number:	
Email Address:	

A3 Please provide the Agent's details:

Title:	Mr
First Name:	Steven
Last Name:	Brown
Job Title: (where relevant)	
Organisation: (where relevant)	Woolf Bond Planning
Address:	
Postcode:	
Telephone Number:	
Email Address:	

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1 and HP4**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
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9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in land located to the east of Cartwright Drive, Titchfield. The Site has been assessed in the SHELAA as Site Ref: 3184. The site area is approximately 8.13 hectares and has the capacity to accommodate approximately 140 houses.
- 1.2. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore advocate changes to the Local Plan to address this, including the allocation of our client's land to the east of Cartwright Drive, Titchfield.
- 1.3. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
- 1.4. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## **2. REPRESENTATIONS AND SUPPORTING INFORMATION**

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
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- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)

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2.2. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
  
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
  
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
  
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
  
- 3.4. To address this requirement for additional homes, we contend that further land should be allocated including the land controlled by our clients east of Cartwright Drive, Locks Heath (SHELAA 2021 site ref 3184). This site can accommodate approximately 140 dwellings (including a policy-compliant level of affordable housing) in a sustainable location.

- 3.5. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities and the allocation of land east of Cartwright Drive, Locks Heath can also supply homes to contribute towards to resolving this issue.
- 3.6. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
- 3.7. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, FBC has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement as set out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.

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<sup>7</sup> (541 x 18) + 1,000

5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

- 5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.
- 5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

## **Conclusions**

- 5.33. The housing requirement and delivery as set out in Policy H1 cannot be said to be sound as it fails to provide for at least 15 years post adoption together with a failure to plan for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### **Changes sought to the Development Requirements in Policy H1.**

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and like Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;

- c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
- d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.

5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.

1. That policy H1 is amended to:
  - A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need (including our clients land east of Cartwright Drive; and
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
2. That consequential amendments are made to the document to reflect these revisions.

## 6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY

### General

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

- 6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.
- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Portchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.

- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
  - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
  - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
  - d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
  - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
  - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

- 6.10. The Inspector’s conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.
- 6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client’s omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 16**):
- 6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.
- 6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 16** is that the shortfall is much greater than purported to be the case by the Council.
- 6.14. The below Table provides a comparison between the housing land supply position set out in the Council’s Published Report to Committee in February 2021, the Council’s updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 16**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

- 6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.
- 6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

### **Suggested Changes to Policy HP4**

- 6.17. Policy HP4 cannot be said to be sound in respect of the following:
- a) Not positively prepared as the policy (alongside others in the document) will fail to provide an effective solution towards maintaining a five years supply of housing,
  - b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.
- 6.18. To address these matters of soundness, the following amendments is proposed:
- 1. That clause c is omitted from policy HP4.

## **7. OMISSION SITE: FAILURE TO IDENTIFY LAND TO THE EAST OF CARTWRIGHT DRIVE AS A HOUSING ALLOCATION FOR APPROXIMATELY 140 DWELLINGS**

### **General**

- 7.1. Through the other representations submitted to the policies of the Plan, there is a need to allocate additional land for housing development. Having regard to the representations and the earlier promotion of the omission site for residential development, the evidence justifies the allocation of the site for circa 140 dwellings.
- 7.2. The Site is well related to the urban area of Locks Heath and Park Gate. Moreover, the Site affords an extremely sustainable location in helping to meet identified housing needs.
- 7.3. The site was considered suitable for development in the 2020 SHELAA.
- 7.4. However in the 2021 SHELAA it was discounted for development with the reason being 'The site is within landscape identified as of special character for the Borough. Development likely to impact the setting of heritage assets. Development limited to the previously developed land in the north west corner of the site may be acceptable.'
- 7.5. With regards to the first reason, an independent landscape consultant has assessed the site and does not consider that the site offers landscape value of an special merit and, moreover is not visible from many public viewpoints. Notwithstanding, it is proposed to create additional planting on the eastern boundary to provide a strong level of natural screening from views to the east.
- 7.6. Concerning the heritage assets in the vicinity, an independent heritage consultant has reviewed the site and, due to a combination of distance, natural screening and topography development at the site will not be visible within the setting of the nearby listed buildings and conservation area. It is worth noting that the proposed buildings will not exceed 2 storeys in height.

- 7.7. We therefore consider that part of the solution to addressing the identified housing shortfall is to allocate the subject site, Cartwright Drive, for residential development alongside consequential changes to the Policy Map.

### **Change sought to the Local Plan**

- 7.8. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **land east of Cartwright Drive (SHELAA Ref: 3184) should be identified as a housing allocation for circa 140 dwellings, with consequential amendments to settlement boundaries and the other designations, as detailed in other representations.**

## **8. OVERALL CONCLUSIONS**

- 8.1. Our representations have identified a number of concerns with the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
- 8.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.
- 8.3. These matters can be addressed through Main Modifications.

## **9. FINAL REMARKS**

- 9.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 9.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations, including the allocation of our client's site east of Cartwright Drive for approximately 140 dwellings.

- 9.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:	Mr
First Name:	Steve
Last Name:	Carrington
Job Title: (where relevant)	
Organisation: (where relevant)	Foreman Homes Ltd
	c/o Agent
Address:	
Postcode:	
Telephone Number:	
Email Address:	

A3 Please provide the Agent's details:

Title:	Mr
First Name:	Steven
Last Name:	Brown
Job Title: (where relevant)	
Organisation: (where relevant)	Woolf Bond Planning
Address:	
Postcode:	
Telephone Number:	
Email Address:	

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1 and HP4**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
8. Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015)
9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in land located to the east of Posbrook Lane and south of Bellfield, Titchfield. The Site has been assessed in the 2021 SHELAA as Site Ref: 11.
  
- 1.2. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore advocate changes to the Local Plan to address this, including the allocation of our client's east of Posbrook Lane and south of Bellfield, Titchfield.
  
- 1.3. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
  
- 1.4. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## **2. REPRESENTATIONS AND SUPPORTING INFORMATION**

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)

2.2. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
  
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
  
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
  
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
  
- 3.4. To address this requirement for additional homes, we contend that further land should be allocated including the land controlled by our clients east of Posbrook Lane and south of Bellfield (SHELAA site ref 11). This site can accommodate approximately 60 dwellings (including a policy-compliant level of affordable housing) in a sustainable location.

- 3.5. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities and the allocation of land east of Posbrook Lane and south of Bellfield, Titchfield can also supply homes to contribute towards resolving this issue.
- 3.6. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
- 3.7. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, FBC has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement asset out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.

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<sup>7</sup> (541 x 18) + 1,000

5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

- 5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.
- 5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

## **Conclusions**

- 5.33. The housing requirement and delivery as set out in Policy H1 cannot be said to be sound as it fails to provide for at least 15 years post adoption together with a failure to plan for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### **Changes sought to the Development Requirements in Policy H1.**

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and like Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;

- c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
- d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.

5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.

1. That policy H1 is amended to:
  - A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need (including our clients land east of Posbrook Lane and south of Bellfield, Titchfield; and
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
2. That consequential amendments are made to the document to reflect these revisions.

## 6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY

### General

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

- 6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.
- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Portchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.

- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
  - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
  - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
  - d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
  - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
  - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

- 6.10. The Inspector’s conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.
- 6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client’s omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 16**):
- 6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.
- 6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 16** is that the shortfall is much greater than purported to be the case by the Council.
- 6.14. The below Table provides a comparison between the housing land supply position set out in the Council’s Published Report to Committee in February 2021, the Council’s updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 16**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

- 6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.
- 6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

### **Suggested Changes to Policy HP4**

- 6.17. Policy HP4 cannot be said to be sound in respect of the following:
- a) Not positively prepared as the policy (alongside others in the document) will fail to provide an effective solution towards maintaining a five years supply of housing,
  - b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.
- 6.18. To address these matters of soundness, the following amendments is proposed:
- 1. That clause c is omitted from policy HP4.

## **7. FAILURE TO IDENTIFY LAND TO THE EAST OF POSBROOK AND SOUTH OF BELLFIELD, TITCHFIELD AS A HOUSING ALLOCATION FOR APPROXIMATELY 60 DWELLINGS**

### **General**

- 7.1. Through the other representations submitted to the policies of the Plan, there is a need to allocate additional land for housing development. Having regard to the representations and the earlier promotion of the omission site for residential development, the evidence justifies the allocation of the site for circa 60 dwellings.
- 7.2. The Site is well related to the urban area. Moreover, the Site affords a sustainable location in helping to meet identified housing needs.
- 7.3. The Site is currently subject to an appeal made against the failure of Fareham Borough Council to determine an outline planning application within the statutory period for residential development of 57 dwellings, with all matters reserved expect for access (from Romsey Avenue (LPA Ref: P/19/1193/OA)).
- 7.4. Although the application was not determined it is considered that the most contentious areas of the areas of the scheme relate to impact on the landscape, heritage, agricultural land quality and the impact on the primary support area for Brent Geese and Solent Waders, as set out as the reason for discounting the site within the SHELAA.
- 7.5. In regards to the first issue, the landscape assessment submitted to accompany the scheme concluded that the proposed development would result in moderate landscape effects on the development site itself and its immediate context, but these effects would be localised and limited to an area which is already characterised by urban fringe influence. Further from the proposed development site, and for the wider Lower Meon Valley as a whole, the effects would be minor, and the nature of effect would usually change from negative to positive once proposed new planting has established. The visual effects of

the proposed development would be localised, with walkers on footpaths crossing the application site, and residents on the existing settlement edge, experiencing major, major/moderate or moderate effects. There would be no effects of 'moderate' or greater significance further from the application site.

- 7.6. It is therefore concluded that the proposal addresses the issues raised in the appeal decision in respect of landscape impact, and there is no longer a conflict with Policies CS14, CS22 and DSP6.
- 7.7. In regards to the second issue, as set out in the pre-application response received from Historic England ('HE'), the reduced scale scheme, together with the proposed woodland buffer is considered to mitigate the previously highlighted impact on the Great Posbrook Farm.
- 7.8. It should be noted that in the consultation drawing sent to HE, the proposed woodland buffer was shown continuing up to the boundary of Great Posbrook Farm. In their response, HE highlight that this is not necessary, and that a reduced woodland would serve to ensure that this historic landscape pattern and views are preserved. These matters are addressed in the accompanying Heritage Statement of Case.
- 7.9. The landscape proposals are considered to represent a benefit to the area, in heritage terms, which should weigh in favour of the application being permitted.
- 7.10. On the basis of the foregoing, and as set out in the supporting material to the appeal scheme, it is the case for the Appellant's that the Scheme is submitted in accordance with Local Plan Part 2 Policy DSP5.
- 7.11. In regards to the third issue, the scheme as now proposed, for a significantly reduced number of dwellings, on a significantly reduced part of the site, means more of the land can now be retained in its existing use i.e. grazing. The Appeal Site extends to 4.0 ha. Of this 3.5 ha is of Subgrade 3a "good quality" agricultural land. This falls within the category of BMVAL. Of this approximately 2 ha is proposed for residential development including landscaping. It is the Appellant's case that only limited weight should be given to what is a minor adverse effect resulting from this loss.

- 7.12. It has been agreed with Hampshire County Wildlife, Fareham Borough Council and Natural England that the appeal site is not of importance for Brent Geese and Waders, whilst the landscape evidence demonstrates that development of the site will not have a significant effect on the function and effectiveness of the strategic gap.
- 7.13. On the basis of the evidence prepared in support of the development of the Site for housing, the site has no physical constraints, and is well-related to the existing residential development. It is in close proximity to local services and facilities such that it affords a sustainable location in helping to meet identified housing needs whilst providing for sustainable patterns of growth.
- 7.14. We therefore consider that part of the solution to addressing the identified housing shortfall is to allocate the subject site, east of Posbrook and south of Bellfield, Titchfield, for residential development alongside consequential changes to the Policy Map.

### **Change sought to the Local Plan**

- 7.15. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **land east of Posbrook Lane and south of Bellfield, Titchfield (SHELAA Ref: 11) should be identified as a housing allocation for circa 60 dwellings, with consequential amendments to settlement boundaries and the other designations, as detailed in other representations.**

## **8. OVERALL CONCLUSIONS**

- 8.1. Our representations have identified a number of concerns with the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
- 8.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.

- 8.3. These matters can be addressed through Main Modifications.

## **9. FINAL REMARKS**

- 9.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 9.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations, including the allocation of our client's site east of Posbrook Lane and south of Bellfield, Titchfield for approximately 60 dwellings.
- 9.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:	Mr
First Name:	Steve
Last Name:	Carrington
Job Title: (where relevant)	
Organisation: (where relevant)	Foreman Homes Ltd
	c/o Agent
Address:	
Postcode:	
Telephone Number:	
Email Address:	

A3 Please provide the Agent's details:

Title:	Mr
First Name:	Steven
Last Name:	Brown
Job Title: (where relevant)	
Organisation: (where relevant)	Woolf Bond Planning
Address:	
Postcode:	
Telephone Number:	
Email Address:	

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1 and HP4**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
8. Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015)
9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in land located to the east of Raley Road, Locks Heath. The Site has been assessed in the SHELAA as Site Ref: 58. The site area is 2.03 hectares and has the capacity to accommodate approximately 50 houses.
- 1.2. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore advocate changes to the Local Plan to address this, including the allocation of our client's land to the east of Raley Road, Locks Heath.
- 1.3. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
- 1.4. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## **2. REPRESENTATIONS AND SUPPORTING INFORMATION**

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)

2.2. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
  
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
  
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
  
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
  
- 3.4. To address this requirement for additional homes, we contend that further land should be allocated including the land controlled by our clients east of Raley Road, Locks Heath (SHELAA 2021 site ref 58). This site can accommodate approximately 50 dwellings (including a policy-compliant level of affordable housing) in a sustainable location.

- 3.5. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities and the allocation of land east of Raley Road, Locks Heath can also supply homes to contribute towards to resolving this issue.
- 3.6. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
- 3.7. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, FBC has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement as set out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.

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<sup>7</sup> (541 x 18) + 1,000

5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

- 5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.
- 5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

## **Conclusions**

- 5.33. The housing requirement and delivery as set out in Policy H1 cannot be said to be sound as it fails to provide for at least 15 years post adoption together with a failure to plan for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### **Changes sought to the Development Requirements in Policy H1.**

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and like Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;

- c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
- d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.

5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.

1. That policy H1 is amended to:
  - A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need (including our clients land east of Raley Road; and
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
2. That consequential amendments are made to the document to reflect these revisions.

## **6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY**

### **General**

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

- 6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.
- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Portchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.

- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
  - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
  - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
  - d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
  - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
  - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

- 6.10. The Inspector’s conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.
- 6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client’s omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 16**):
- 6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.
- 6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 16** is that the shortfall is much greater than purported to be the case by the Council.
- 6.14. The below Table provides a comparison between the housing land supply position set out in the Council’s Published Report to Committee in February 2021, the Council’s updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 16**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

- 6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.
- 6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

### **Suggested Changes to Policy HP4**

- 6.17. Policy HP4 cannot be said to be sound in respect of the following:
- a) Not positively prepared as the policy (alongside others in the document) will fail to provide an effective solution towards maintaining a five years supply of housing,
  - b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.
- 6.18. To address these matters of soundness, the following amendments is proposed:
- 1. That clause c is omitted from policy HP4.

## **7. OMISSION SITE: FAILURE TO IDENTIFY LAND TO THE EAST OF RALEY ROAD AS A HOUSING ALLOCATION FOR APPROXIMATELY 50 DWELLINGS**

### **General**

- 7.1. Through the other representations submitted to the policies of the Plan, there is a need to allocate additional land for housing development. Having regard to the representations and the earlier promotion of the omission site for residential development, the evidence justifies the allocation of the site for circa 50 dwellings.
- 7.2. The Site is within the defined the urban area of Locks Heath. Moreover, the Site affords an extremely sustainable location in helping to meet identified housing needs.
- 7.3. The site is allocated for housing within the Fareham Local Plan Part 2 (2015) under Housing Site H6.
- 7.4. The site was considered suitable for development in the 2020 SHELAA.
- 7.5. However in the 2021 SHELAA it was discounted for development with the reason being ‘there is insufficient evidence that part of this site, including site access, is available for residential development during the plan period.’
- 7.6. With regards to this reason, it is our understanding that the availability of the site was not forthcoming at the site. We understand that an application is currently being readied and the site is now available and deliverable in the near future.
- 7.7. We therefore consider that part of the solution to addressing the identified housing shortfall is to allocate the subject site, Raley Road, for residential development alongside consequential changes to the Policy Map.

### **Change sought to the Local Plan**

- 7.8. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **land east of Raley Road (SHELAA Ref: 58) should be identified as a housing allocation for circa 50 dwellings, with consequential amendments to settlement boundaries and the other designations, as detailed in other representations.**

## **8. OVERALL CONCLUSIONS**

- 8.1. Our representations have identified a number of concerns with the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
- 8.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.
- 8.3. These matters can be addressed through Main Modifications.

## **9. FINAL REMARKS**

- 9.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 9.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations, including the allocation of our client's site east of Raley Road, Locks Heath for approximately 50 dwellings.
- 9.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:	Mr
First Name:	Steve
Last Name:	Carrington
Job Title: (where relevant)	
Organisation: (where relevant)	Foreman Homes Ltd
Address:	c/o Agent
Postcode:	
Telephone Number:	
Email Address:	

A3 Please provide the Agent's details:

Title:	Mr
First Name:	Steven
Last Name:	Brown
Job Title: (where relevant)	
Organisation: (where relevant)	Woolf Bond Planning

Address:	
Postcode:	
Telephone Number:	
Email Address:	

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

## **OFFICER REPORT FOR COMMITTEE**

**DATE: 16/09/2020**

**P/18/1073/FP  
FOREMAN HOMES**

**PORTCHESTER WEST**

OUTLINE PLANNING APPLICATION FOR RESIDENTIAL DEVELOPMENT OF 225 DWELLINGS, BIRD CONSERVATION AREA AND AREA OF PUBLIC OPEN SPACE WITH ALL MATTERS RESERVED EXCEPT FOR ACCESS

LAND TO THE SOUTH OF ROMSEY AVENUE, FAREHAM

### ***Report By***

Richard Wright – Direct Dial 01329 824758

#### **1.0 *Introduction***

- 1.1 This application is being presented to the Planning Committee due to the number of third-party representations received.
- 1.2 Members will note from the 'Five Year Housing Land Supply Position' reported to the Planning Committee meeting on 24<sup>th</sup> June 2020 this Council currently has a housing land supply of 4.03 years (a shortfall of 522 dwellings within the 5-year period).

#### **2.0 *Site Description***

- 2.1 The planning application site comprises 12.55 hectares (approximately 31 acres) of agricultural land currently used for growing crops. The site is located outside of the defined urban settlement boundaries to the south of existing houses in the urban area on Romsey Avenue. The site is part of a Primary Support Area (F21) as identified in the Solent Waders and Brent Goose Strategy (SWBGS).
- 2.2 To the immediate east of the application lies land now in use as public open space in connection with the development of 120 houses on the north side of Cranleigh Road (planning application reference P/15/0260/OA) allowed on appeal in 2016.
- 2.3 To the south-west of the application site lies Wicor Recreation Ground and the ground of AFC Portchester football club around which there is a band of mature trees.

#### **3.0 *Description of Proposal***

- 3.1 Outline planning permission is sought for 225 dwellings on the site with all matters reserved except for access.

- 3.2 Access into the site is proposed via the existing southern spur of Romsey Avenue along which access is currently gained to the field via a gate. A series of proposals for work to the adopted highway between the site and the A27 junction with Beaulieu Avenue are proposed. It is proposed to rebuild the existing site access road from Romsey Avenue to current standards and to tie this into the Romsey Avenue carriageway. The existing junction with Romsey Avenue would be formalised with road markings and the installation of an uncontrolled crossing point. Parking restrictions are proposed along Romsey Avenue and Beaulieu Avenue to keep the route from the A27 to the site free from carriageway parking. In addition it is proposed to remove the verge on the eastern side of Beaulieu Avenue and provide off-street parking bays.
- 3.3 The applicant has proposed a bird mitigation reserve on the application site measuring 4.2 hectares (10.34 acres) in size of which 3.7 hectares (9.1 acres) is designed for mitigation for Brent geese.

#### **4.0 Policies**

- 4.1 The following policies apply to this application:

National Planning Policy Framework (NPPF)  
Planning Practice Guidance (PPG)

#### **Adopted Fareham Borough Core Strategy**

CS2: Housing Provision  
CS4: Green Infrastructure, Biodiversity and Geological Conservation  
CS5: Transport Strategy and Infrastructure  
CS6: The Development Strategy  
CS14: Development Outside Settlements  
CS15: Sustainable Development and Climate Change  
CS16: Natural Resources and Renewable Energy  
CS17: High Quality Design  
CS18: Provision of Affordable Housing  
CS20: Infrastructure and Development Contributions  
CS21: Protection and Provision of Open Space

#### **Adopted Development Sites and Policies**

DSP1: Sustainable Development  
DSP2: Environmental Impact  
DSP3: Impact on Living Conditions  
DSP6: New Residential Development Outside of the Defined Urban Settlement  
DSP13: Nature Conservation  
DSP14: Supporting Sites for Brent Geese and Waders

DSP15: Recreational Disturbance on the Solent Special Protection Areas  
DSP40: Housing Allocations

## **5.0 Relevant Planning History**

None

## **6.0 Representations**

6.1 A total of 489 objections have been received from 307 residents (some residents have commented more than once following revisions being made to the application).

The following material planning considerations have been raised:

### **General**

- Impact on schools, doctors, dentists and other local services
- Loss of green space/field
- Impact on sewage systems
- Housing development should be elsewhere instead (e.g. Welborne)
- Urbanisation of area
- Set a precedent for other housing development to the south and west
- Shortage of affordable housing
- No convenience stores located nearby
- Increase in crime
- Developer will make an application for more dwellings on the site
- Poor local plan designated this site for development as well as other sites within Portchester
- Planning system does not protect areas of countryside
- No consideration of the cumulative impact from the Cranleigh Road site
- Southern Water has not yet been consulted
- Contrary to policies and housing figures provided in Local Plan
- No demand for housing
- Unsustainable
- Will result in overcrowding
- Anti-social behaviour
- Not right type of tenure for Fareham
- Cannot be used in comparison to Cranleigh Road development
- Not relative in scale to shortfall in housing land supply

### **Design**

- Visual impact
- Flats not in-keeping with surrounding area
- No detailed information on design of houses

- Design of dwellings look average and do not complement the surrounding area
- Development should be single-storey due to increased demand
- Basic elevations
- Densely built
- Too cramped
- Design should match houses on Romsey Avenue
- Design of buffer should involve local community

### **Highways**

- Increase in traffic
- Access to site via Romsey Avenue is unsafe
- Parking problems
- Roads too narrow for refuse lorries and emergency vehicles to enter site
- Lorries cannot turn around corner between Beaulieu Avenue and Romsey Avenue
- Highway safety
- Roads not maintained
- Lack of transport strategy for area
- Traffic assessment does not accurately represent traffic movements
- Loss of on-street disabled parking on Beaulieu Avenue
- Lambeth parking survey not carried out
- Reduced pavement width causing pedestrian & cyclist safety issue

### **Environmental**

- Impact on wildlife, in particular bird life and that of nearby wildlife sites
- A number of protected species within surrounding area
- Land should be protected as is located within close proximity to a Ramsar Site, SSSI, and Special Protection Area (SPA)
- Loss of agricultural land
- Nitrate pollution of water environment
- Loss of green space
- Increased flood risk
- Increase in noise and light pollution
- Increase in air pollution
- Dust pollution
- Gathering of ecological evidence does not fully assess the ecosystems
- Mitigation does not provide net benefit to birds
- Impact assessment fails to examine the noise impact of construction on birds
- Slow worm population reported as too low

- Development at Cranleigh Road has led to displacement of wildlife to application site
- Ecological impact assessment does not take into consideration the impact of noise construction on the rare and protected birds
- Three other SPA areas have not been marked for development
- Failed to acknowledge roosting bats
- Impact on domestic water pressure
- Loss of trees
- High quality agricultural land

### **Amenity**

- Overlooking
- Loss of privacy
- Noise and disturbance from construction
- Close proximity of flats to rear gardens
- Loss of light

## **7.0 Consultations**

EXTERNAL

### **Natural England**

- 7.1 Objection. The application is likely to have a significant effect on the Portsmouth Harbour SPA and SSSI and the Council is advised to undertake an Appropriate Assessment under The Conservation of Habitat and Species Regulations 2017. The proposal will result in a loss of supporting habitat. There is uncertainty as to whether the mitigation measures proposed are likely to protect the integrity of the designated sites.

### **Highways (Hampshire County Council)**

- 7.2 Four sets of comments were received from the Highway Authority dated 29<sup>th</sup> October 2018, 19<sup>th</sup> December 2019, 20<sup>th</sup> July 2020 and 4<sup>th</sup> September 2020. The following summary of the advice received is formed of the final position given by the Highway Authority on each of the relevant points:

#### *Site access*

The proposed parking restrictions are required to enable access for larger vehicles such as delivery vans, refuse vehicles and emergency service vehicles, to mitigate congestion and conflict and to ensure adequate visibility splays are maintained. The additional parking restrictions at the junctions of Beaulieu Avenue/Romsey Avenue and the site access/Romsey Avenue are necessary to make the development acceptable and as such the Traffic Regulation Order (TRO) process should be progressed and funded by the applicant should the development be permitted.

While the principle of parking restrictions would be agreed through the planning process should permission be granted, it should be noted that the TRO process is open to public consultation and the implementation of the proposed parking restrictions is therefore not guaranteed. As such, any works requiring a TRO must be satisfactorily completed prior to commencement of the development. Furthermore, a contribution of £6,000 is required to implement an additional TRO should further parking restrictions be required on the western side of Beaulieu Avenue, to ensure two-way flow is maintained.

### *Parking*

An assessment of displaced parking due to the introduction of parking restrictions has been provided, including a plan showing the nearest available alternative parking spaces and a summary of the distances to these spaces. The parking survey indicates the introduction of parking restrictions will displace 11 vehicles. This survey demonstrates that there is sufficient parking capacity within reasonable proximity to the existing parking locations to accommodate the forecast displaced parking. The average displacement is 22m (approximately 15 seconds walking time), with a maximum displacement of 45.1m (approximately 32 seconds walking time). It is considered that the introduction of parking restrictions will not incentivise inappropriate or dangerous parking and as such will not result in a severe impact on the operation of the highway network. However, FBC as planning authority should satisfy themselves that walking distances to alternative parking spaces are acceptable on amenity grounds.

### *Sustainable travel*

The Highway Authority previously requested consideration be given to measures to aid delivery of safe walking and cycling routes to the key destinations of Portchester railway station and Portchester centre. A pedestrian/cycle audit has been completed, improvements identified and costed and a contribution agreed. In addition, a contribution has been agreed to widen footways in the vicinity of the site to current standards.

### *Highway safety*

Given the proposed development will increase vehicular and cycle traffic along the A27 corridor and in particular at Cornaway Lane Roundabout, exacerbating the existing safety concerns, and that the Transport Assessment concludes that the local road network offers conducive routes for cycling that will encourage this mode of travel from the development, mitigation to improve safety is required. A scheme has been developed to improve cycle safety at this location and a contribution towards delivery of this scheme has been agreed.

### *Vehicle trip distribution*

It is considered the proposed development would exacerbate the existing parking and traffic flow issues during school pick up and drop off times in the vicinity of Wicor Primary School. A contribution has been agreed to provide an updated School Travel Plan and implement measures to maintain safety and encourage sustainable modes access to the school, with the aim of improving conditions for those travelling by foot, cycle, scooter or bus and reducing reliance on low occupancy private car travel. Given the relatively compact nature of the catchment area, it is anticipated travel planning measures will have a substantial impact on mode choice. This is considered adequate mitigation for the forecast increase in movements in the vicinity of the school due to the development.

### *Recommendation*

The Highway Authority raises no objection to this proposal from a highways and transportation perspective, subject to the following condition being included and the applicant entering into a Section 106 Legal Agreement to secure the following mitigation package:

- A Transport contribution of £1,126,252 towards the following:
  - Improvements in the vicinity of Delme Roundabout (£12,323)
  - Improvements in the vicinity of Downend Rd/ A27 (£60,350)
  - Cornaway Lane Roundabout cycle improvements (£907,179)
  - Footway widening in the vicinity of the site (£18,000)
  - Walking audit measures (£37,400)
  - School Travel Plan (£85,000)
  - Beaulieu Avenue parking restriction TRO contribution (£6,000)
  
- Payment of the Travel Plan approval and monitoring fees and provision of a surety mechanism to ensure implementation of the Travel Plan.
  
- Implementation of highway works shown on drawings 5611.025 Rev C and 5611.002 Rev D prior to commencement of the development, including payment of fees associated with progression of the TRO process.

### **Southern Water**

- 7.3 The submitted drawings show development will lie over existing public foul sewers which will not be acceptable. The exact position of the public sewer must be determined on site by the applicant before the layout of the proposed development is finalised. It might be possible to divert the sewer, so long as this would result in no unacceptable loss of hydraulic capacity, and the work

was carried out at the developer's expense to the satisfaction of Southern Water under the relevant statutory provisions.

**Flood and Water Management Team (Hampshire County Council)**

- 7.4 It has not been proven that infiltration is a suitable means of surface water disposal for this site. Further information is required before a decision can be made on whether to recommend to the Local Planning Authority that planning permission is granted.

**Archaeology (Hampshire County Council)**

- 7.5 No objection subject to conditions securing assessment, recording and reporting of any archaeological deposits affected by construction.

**Countryside Services (Hampshire County Council)**

- 7.6 Some surfacing improvements will be required on Fareham footpaths 110, 111a and 523 to accommodate the increase in use as a result of the development. The recreational impact of the development is likely to be focused on the rights of way network around the coast and the recreation ground to the south of the development site, however given that the Wicor Countryside Site is only a short walk from the development there is likely to be an increase in recreational pressure at the site and a small contribution towards the management of this site is requested.

**Children's Services (Hampshire County Council)**

- 7.7 The proximity of Wicor Primary School and the lack of local places indicates that an expansion of the school is likely to be required. A financial contribution will contribute towards the provision of additional infrastructure at Wicor Primary School and should also be available to fund the undertaking of school travel plans and associated infrastructure such as additional cycle/scooter storage or improvements to sustainable travel routes.

**Portsmouth City Council**

- 7.8 No comments or observations are offered on this proposal.

INTERNAL

**Affordable Housing Strategic Lead**

- 7.9 The change in the proposal to outline is noted. It would be expected that the scheme provides a policy compliant percentage of affordable housing with an appropriate tenure split. Of the Affordable/Social Rent properties then provided it would be expected that the mix reflects the need in the Portchester area, based on the Council's Housing Register.

**Ecology**

- 7.10 Concerns raised in relation to the loss of Solent Waders and Brent Goose Strategy 'Primary Support Area' and the lack of detail within the submitted Ecological Impact Assessment (EclA), particularly in relation to the delivery of the reptile receptor site, operational phase impacts on badgers, construction phase noise impacts and cumulative impacts.

#### **Trees**

- 7.11 No objection.

#### **Contaminated Land Officer**

- 7.12 No objection.

### **8.0 Planning Considerations**

- 8.1 The following matters represent the key material planning considerations which need to be assessed to determine the suitability of the development proposal. The key issues comprise:

- a) Implication of Fareham's current 5-year housing land supply position;
- b) Residential development in the countryside;
- c) The impact on European Protected Sites
- d) Policy DSP40;
- e) Other matters;
- f) The planning balance

#### **a) Implications of Fareham's current 5-year housing land supply position**

- 8.2 A report titled "Five-year housing land supply position" was reported to the Planning Committee meeting on 24<sup>th</sup> June 2020. That report set out this Council's local housing need along with this Council's current housing land supply position. The report concluded that this Council currently has a housing land supply of 4.03 years (a shortfall of 522 dwellings within the 5-year period).
- 8.3 Officers accept that the Council cannot currently demonstrate a 5-year supply of deliverable housing sites.
- 8.4 The starting point for the determination of this planning application is section 38(6) of the Planning and Compulsory Purchase Act 2004:

*"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must*

*be made in accordance with the plan unless material considerations indicate otherwise".*

- 8.5 In determining planning applications there is a presumption in favour of the policies of the extant Development Plan, unless material considerations indicate otherwise. Material considerations include the planning policies set out in the NPPF.
- 8.6 Paragraph 59 of the NPPF seeks to significantly boost the supply of housing.
- 8.7 Paragraph 73 of the NPPF states that local planning authorities should identify a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement including a buffer. Where a local planning authority cannot do so, and when faced with applications involving the provision of housing, the policies of the local plan which are most important for determining the application are considered out-of-date.
- 8.8 Paragraph 11 of the NPPF then clarifies what is meant by the presumption in favour of sustainable development for decision-taking, including where relevant policies are "out-of-date". It states:

*"For decision-taking this means:*

- *Approving development proposals that accord with an up-to-date development plan without delay; or*
- *Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting planning permission unless:*
  - i. *The application of policies in this Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed<sup>6</sup>; or*
  - 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."*

- 8.9 Footnote 6 to Paragraph 11 reads:

*"The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding*

*Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change.”*

8.10 The key judgement for Members therefore is whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies taken as a whole.

8.11 Members will be mindful of Paragraph 177 of the NPPF which states that:

*“The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.”*

8.12 The following sections of the report assesses the application proposals against this Council's adopted local planning policies and considers whether it complies with those policies or not. Following this Officers undertake the Planning Balance to weigh up the material considerations in this case.

8.13 In the absence of a five-year supply of deliverable housing sites, officers consider that policy DSP40 is the principal development plan policy that guides whether schemes will be considered acceptable.

#### **b) Residential Development in the Countryside**

8.14 Policy CS2 (Housing Provision) of the adopted Core Strategy states that priority should be given to the reuse of previously developed land within the urban areas. Policy CS6 (The Development Strategy) goes on to say that development will be permitted within the settlement boundaries. The application site lies within an area which is outside of the defined urban settlement boundary.

8.15 Policy CS14 of the Core Strategy states that:

*'Built development on land outside the 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.'*

- 8.16 Policy DSP6 of the Local Plan Part 2: Development Sites and Policies states - there will be a presumption against new residential development outside of the defined urban settlement boundary (as identified on the Policies Map).
- 8.17 The site is clearly outside of the defined urban settlement boundary and the proposal does not comprise one of the acceptable forms of development listed in Policy CS14. The proposal is therefore contrary to Policies CS2, CS6, CS9 and CS14 of the adopted Core Strategy and Policy DSP6 of the adopted Local Plan Part 2: Development Sites and Policies Plan.

### **c) The impact upon European Protected Sites**

- 8.18 Core Strategy Policy CS4 sets out the strategic approach to Biodiversity in respect of sensitive European sites and mitigation impacts on air quality. Policy DSP13: Nature Conservation of the Local Plan Part 2 confirms the requirement to ensure that designated sites, sites of nature conservation value, protected and priority species populations and associated habitats are protected and where appropriate enhanced.
- 8.19 The Solent is internationally important for its wildlife. Each winter, it hosts over 90,000 waders and wildfowl including 10 per cent of the global population of Brent geese. These birds come from as far as Siberia to feed and roost before returning to their summer habitats to breed. There are also plants, habitats and other animals within the Solent which are of both national and international importance.
- 8.20 In light of their importance, areas within the Solent have been specially designated under UK/ European law. Amongst the most significant designations are Special Protection Areas (SPA) and Special Areas of Conservation (SAC). These are often referred to as 'European Protected Sites' (EPS).
- 8.21 Regulation 63 of the Habitats and Species Regulations 2017 provides that planning permission can only be granted by a 'competent authority' if it can be shown that the proposed development will either not have a likely significant effect on designated EPS or, if it will have a likely significant effect, that effect can be mitigated so that it will not result in an adverse effect on the integrity of the designated EPS. This is done following a process known as an Appropriate Assessment. The competent authority is responsible for carrying out this process, although they must consult with Natural England and have regard to their representations. The competent authority is either the local planning authority or the Planning Inspectorate, depending on who is determining the application.

- 8.22 When considering the proposed development there are three main likely significant effects on EPS.
- 8.23 The first of these effects is the loss of a Primary Support Area (F21) for waders and Brent geese, qualifying features of the EPS, as identified in the Solent Waders and Brent Goose Strategy (SWBGS).
- 8.24 In response to the application, on this particular matter Natural England has provided the following advice.

*The Primary Support Areas are land that, when in suitable management, make an important contribution to the function of the waders and Brent goose ecological network, supporting the SPAs. The preferred approach is for development to be located outside the network of sites.*

*Should a Primary Support Area be proposed for development, as in this case, detailed criteria has been developed to assess the suitability of replacement sites, namely habitat type, disturbance, area of habitat, timing and availability of habitat, and geographical location. With regards to Primary Support Areas, there will be a requirement for the off-setting area to fulfil the same special contribution and particular function of the areas lost or damaged for the same species of birds.*

*Natural England has reviewed the bird mitigation proposals for the development site. We do not have certainty that the reserve will replicate the current ecological function of the site due to the combined influence of a number of factors. These factors include the size of the proposed reserve, the loss of openness, restricted sight lines and the close proximity of new development.*

*Whilst the development site is located on the urban fringe, it forms part of a wider countryside gap of around 40 hectares. It forms part of one of the last remaining agricultural areas adjacent to the Portsmouth Harbour SPA. We do not have certainty that the 4.2 hectare bird reserve, of which 3.7 hectares is designed for mitigation for the Brent geese, will replicate the same function as the existing site within this open gap. Natural England has serious doubts that the site would be used by Brent geese (the qualifying features) to the same extent as the current potential.*

- 8.25 The advice from Natural England on this point is clear that it does not consider there is sufficient certainty to be drawn from the applicant's mitigation proposals that the current ecological function of the site will be replicated to offset the loss of supporting habitat. As a result, the proposed development would have an adverse effect on the integrity of the EPS.

- 8.26 The second likely significant effect on EPS relates to deterioration in the water environment through increased nitrogen. Natural England has highlighted that there is existing evidence of high levels of nitrogen and phosphorus in parts of The Solent with evidence of eutrophication. Natural England has further highlighted that increased levels of nitrates entering the Solent (because of increased amounts of wastewater from new dwellings) will have a likely significant effect upon the EPS.
- 8.27 Achieving nutrient neutrality is one way to address the existing uncertainty surrounding the impact of new development on designated sites. Natural England have provided a methodology for calculating nutrient budgets and options for mitigation should this be necessary. The nutrient neutrality calculation includes key inputs and assumptions that are based on the best-available scientific evidence and research, however for each input there is a degree of uncertainty. Natural England advise local planning authorities to take a precautionary approach when addressing uncertainty and calculating nutrient budgets.
- 8.28 The applicant has submitted a nutrient budget for the development. The existing use of the land is for the growing of cereal crop. The budget shows the development would result in a reduction in the amount of nitrogen reaching the water environment. With that in mind the development would not result in a deterioration in the water environment of the EPS.
- 8.29 The third of these likely significant effects on EPS concerns recreational disturbance on the Solent coastline through an increase in population. Policy DSP15 of the adopted Fareham Borough Local Plan Part 2: Development Sites and Policies explains that planning permission for proposals resulting in a net increase in residential units may be permitted where the 'in combination' effects of recreation on the Special Protection Areas are satisfactorily mitigated through the provision of a financial contribution to the Solent Recreation Mitigation Strategy (SRMP). Had the proposal been found acceptable in all other regards the applicant would have been invited to make a financial contribution through the SRMS. In the absence however of a legal agreement to secure such a contribution, or the submission of evidence to demonstrate that the 'in combination' effects of the development can be avoided or mitigated in another way, the proposal is held to be contrary to Policy DSP15.

**d) Policy DSP40**

- 8.30 Policy DSP40: Housing Allocations, of Local Plan Part 2, states that:

*"Where it can be demonstrated that the Council does not have a five-year supply of land for housing against the requirements of the Core Strategy (excluding Welborne) additional housing sites, outside the urban area boundary, may be permitted where they meet all of the following criteria:*

- i. The proposal is relative in scale to the demonstrated 5-year housing land supply shortfall;*
- 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 to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps;*
- iv. It can be demonstrated that the proposal is deliverable in the short term;*  
*and*
- v. The proposal would not have any unacceptable environmental, amenity or traffic implications".*

8.31 Each of these five bullet points are worked through in turn below:

**Policy DSP40 (i)**

8.32 The proposal for up to 225 dwellings is relative in scale to the 5YHLS shortfall and therefore bullet i) of Policy DSP40 is satisfied.

**Policy DSP40 (ii)**

8.33 The northern site boundary immediately abuts the rear gardens of dwellings on Romsey Avenue within the existing adjacent urban area. The overall extent of the housing development would be confined to an area all within a close distance of the urban boundary. With this in mind Officers consider that the development would be well related to and well integrated with the neighbouring settlement.

8.34 The site would also be comparatively well located to the services and facilities located in the Portchester area as well as the nearest bus stops on Portchester Road being a relatively short distance away.

8.35 It is considered that the second point of Policy DSP40 is satisfied.

**Policy DSP40 (iii)**

8.36 The third test of Policy DSP40(iii) is that the proposal is '*sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps*'.

8.37 The Landscape and Visual Appraisal submitted by the applicant contends that *“the proposed development represents a medium scale, partially visible addition to the townscape”* and that *“whilst the proposals would result in a material change to the landscape of the site overall, the adverse effects of increased built form are considered to be balance by the beneficial effects of the positive design response and improvements in the boundary and on-site landscape features”*. It should be noted that the application has been revised since the LVA was produced without it being updated. Notwithstanding, Officers would broadly concur that the adverse visual and landscape effects of the development could be successfully minimised by a positive design response and landscaping strategy at reserved matters stage.

**Policy DSP40 (iv)**

8.38 Officers consider that the proposal for 225 houses could be delivered within the short term. The proposal would therefore be in accordance with point iv of policy DSP40.

**Policy DSP40 (v)**

8.39 The final test of Policy DSP40 requires that the proposal does not have any unacceptable environmental, amenity or traffic implications. These issues are considered in turn below.

**Environmental**

8.40 The impact of the development on European protected sites has been set out earlier in this report. There are three main adverse effects on the integrity of EPS contrary to Policies CS4, DSP13 & DSP15 of the adopted local plan. In addition there are other environmental implications relating to protected and priority species on site, the loss of agricultural land and the applicant’s proposed means of surface water drainage.

8.41 The Council’s Ecologist has raised concerns regarding the lack of information provided by the applicant, including updated information in light of changes to the proposed scheme, in relation to the delivery of the reptile receptor site, impacts on badgers, construction noise and cumulative impacts. In the absence of such information the proposal fails to demonstrate that protected and priority species would be protected and enhanced which is contrary to the aims of Policy DSP13.

8.42 Local plan Policy CS16 seeks to prevent the loss of the best and most versatile agricultural land. The NPPF (paragraph 170(b) recognises the economic and other benefits of the best and most versatile agricultural land.

8.43 The site contains Grade 1 (excellent quality) and Grade 2 (very good quality) agricultural land, i.e. best and most versatile (BMV) agricultural land as

defined in the NPPF. The proposal would therefore be contrary to Policy CS16 and the permanent loss of BMV agricultural land weighs against granting planning permission in the balance of issues.

- 8.44 The lead local flood authority Hampshire County Council has raised concerns over the applicant's proposal to use infiltration as a means of surface water disposal for the development. Insufficient information has been provided to demonstrate that infiltration would be suitable for this site based on the technical details provided. As a result, the development proposal fails to provide for the satisfactory disposal of surface water contrary to local plan Policy DSP2.

### **Amenity**

- 8.45 The application is in outline meaning the layout of the site and therefore relationship and distance between dwellings is yet to be proposed. Consideration of the likely impact on light to, outlook from and privacy enjoyed by neighbouring dwellings is a reserved matter for a subsequent stage of the planning process.
- 8.46 There are no adjacent land uses which would be likely to materially affect the living conditions of future residents, for example by way of noise or odour.

### **Highways**

- 8.47 The Highway Authority Hampshire County Council have provided detailed comments relating to a number of aspects of the proposed development. These are summarised earlier in this report.
- 8.48 The main issues dealt with in the response from the highway authority are the effect of the development on the operation of the wider highway network, sustainable modes of transport, the site access via Beaulieu Avenue and Romsey Avenue and the associated proposed parking restrictions, and the impact on traffic to and from Wicor Primary School.
- 8.49 On the first of these issues, the highway authority is satisfied that adequate assessment of the impact of the development on each of the key junctions in the surrounding road network has now been carried out by the applicant. Financial contributions towards improvements to the junction of the A27/Downend Road/Shearwater Avenue and Delme roundabout have been agreed.
- 8.50 In order to promote sustainable modes of access, additional financial contributions have been agreed in relation to cycle improvements at the roundabout where Cornaway Lane meets the A27 and footway widening in the vicinity of the site.

- 8.51 The site access from the A27 via Beaulieu Avenue and Romsey Avenue has been the subject of much comment and concern raised by local residents. In response to initial problems highlighted by the highway authority in terms of the geometry and capacity of these access roads, the applicant has proposed a series of measures to demonstrate the adequacy of this approach including parking restrictions and new parking bays along Beaulieu Avenue and Romsey Avenue. The highway authority has confirmed that these measures mean the site access is now considered acceptable. The resultant displacement of parking spaces and loss of highway verge is not considered unacceptable. These measures would however be subject to amendments to existing or introduction of new traffic regulation orders (TRO) which are open to public consultation through an entirely separate process carried out by the Highway Authority. For those reasons any new TROs or amendments to existing TROs would need to be satisfactorily completed prior to commencement of the development.
- 8.52 Another major concern raised by local residents is the potential impact on traffic and pedestrians travelling to and from Wicor Primary School. The highway authority has stated that they consider it unrealistic of the applicant to assume that the proposed development will generate no additional car trips to the school. They also consider that the development will result in a traffic increase of around 17% in the AM peak along Hatherley Crescent/Hatherley Drive/Cornaway Lane to the A27. Given this, the highway authority has recommended that a contribution be required from the applicant to update and implement planned measures to maintain safety and encourage sustainable modes of access to the school. They consider this will have a substantial impact on mode choice and would therefore be adequate mitigation for the forecast increase in vehicle movements in the vicinity of the school.
- 8.53 Had the application not been recommended for refusal for other reasons, Officers would have looked to secure the financial contributions requested by the highway authority through an appropriately worded Section 106 legal agreement. The agreement would also have been used to secure travel plan matters and implementation of off-site highway works prior to the commencement of the development. A Grampian-style planning condition would have been used to ensure all necessary matters in introducing or amending TROs relating to parking restrictions along Beaulieu Avenue and Romsey Avenue were concluded prior to development commencing.

**e) Other matters**

**Affordable Housing**

- 8.54 The proposal includes the provision of 40% affordable housing comprising a blend of affordable tenures. Subject to appropriate size, mix and tenure being agreed to meet the identified local need to comply with Policy CS18, officers consider this acceptable and appropriate to secure via a Section 106 legal agreement.

### **Open Space, Play Provision and Public Rights of Way**

- 8.55 The submitted “areas plan” indicates that an area of public open space 1.4 hectares in size would be provided as part of the development. The appropriateness of public open space provision in terms of its location, quality and size would need to be assessed at the same time as considering the layout of the site and in accordance with the Council’s adopted Planning Obligations Supplementary Planning Document (SPD).
- 8.56 In respect of play provision and in accordance with the adopted Planning Obligation SPD, the proposed number of units would require the provision of a Neighbourhood Equipped Area of Plan (NEAP). This, along with the public open space overall, could be secured via a Section 106 legal agreement and Officers would have sought to do so had it not been for the other overriding reasons for refusal.
- 8.57 Hampshire County Council Countryside Service have commented on the application to set out the likely impact of the development on the public rights of way network in the surrounding area. It is anticipated that the increased recreational pressure on public footpaths and accessible areas of countryside could be addressed through a financial contribution towards improvements to the wider network in the local area. This contribution could be secured via a Section 106 legal agreement.

### **Effect upon Local Infrastructure**

- 8.58 Concerns have been raised over the effect of the number of dwellings on schools, doctors and other services in the area.
- 8.59 Hampshire County Council have identified a need for expansion and improvements to Wicor Primary School to accommodate the anticipated increase in pupil demand arising from the development. A financial contribution towards this expansion could be secured through a Section 106 legal agreement had it been the case that Officers were recommending planning permission be granted.
- 8.60 The difficulty in obtaining doctor’s appointments and dental services is an issue regularly raised in respect of new housing proposals. It is ultimately for the health providers to decide how they deliver their services. A refusal on these grounds could not be substantiated.

### **Draft Local Plan**

- 8.61 The Draft Local Plan which addresses the Borough's housing requirements up until 2036 was subject to consultation between 25<sup>th</sup> October 2017 and 8<sup>th</sup> December 2017. The site of this planning application was proposed to be allocated for housing within the 2017 Draft Local Plan. However, at this stage in the plan preparation process, the draft plan carries limited weight in the assessment and determination of this planning application.

### **f) Planning balance**

- 8.62 Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out the starting point for the determination of planning applications:

*"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".*

- 8.63 As set out earlier within this report, the effect of Paragraph 177 of the NPPF is that:

*"The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site".*

- 8.64 In this instance Officers have identified likely significant effects upon the Portsmouth Harbour SPA arising from the loss of part of a Primary Support Area for Brent geese and waders. In order to establish whether these likely significant effects can be sufficiently mitigated it is necessary for an appropriate assessment to be carried out. Officers have judged that the application proposals are contrary to adopted local plan policies and the policies of the NPPF. In light of this, Officers have not undertaken an Appropriate Assessment at this time. Accordingly, the presumption in favour of sustainable development set out at Paragraph 11 of the NPPF does not apply.
- 8.65 The site is outside of the defined urban settlement boundary and the proposal does not relate to agriculture, forestry, horticulture and required infrastructure. The principle of the proposed development of the site would be contrary to Policies CS2, CS6 and CS14 of the Core Strategy and Policy DSP6 of Local Plan Part 2: Development Sites and Policies Plan.

- 8.66 Officers have carefully assessed the proposals against Policy DSP40: Housing Allocations which is engaged as this Council cannot demonstrate a 5YHLS. Officers have also given due regard to the updated 5YHLS position report presented to the Planning Committee on 24<sup>th</sup> June 2020 and the Government steer in respect of housing delivery.
- 8.67 In weighing up the material considerations and conflict between policies; the development of a greenfield site weighted against Policy DSP40, Officers have concluded that the proposal satisfies four of the five policy tests (points i), ii), iii) and iv).
- 8.68 However, the proposal fails to meet the fifth policy test of Policy DSP40 on a number of grounds. The development would lead to the loss of part of a Primary Support Area for which inadequate mitigation has been proposed and which would therefore result in adverse effects on the integrity of EPS. In addition the application contains insufficient information to demonstrate that protected and priority species would be protected or that the proposed means of surface water drainage would be acceptable. The loss of BMV agricultural land is an additional adverse effect of the development which must be weighed on the negative side of the planning balance.
- 8.69 In balancing the objectives of adopted policy which seeks to restrict development within the countryside alongside the shortage in housing supply, Officers acknowledge that the proposal could deliver 225 dwellings in the short term. The contribution the proposed scheme would make towards boosting the Borough's housing supply is a substantial material consideration, in the light of this Council's current 5YHLS. In addition, the proposals include the provision of forty percent affordable housing. Added to this is the benefit of the additional jobs and expenditure in the locality arising from construction activity and the completed development itself.
- 8.70 Officers have carefully weighed the benefits which would be delivered by the proposals, having regard for the Council's 5 year housing land supply position, against the conflict with adopted local plan policies and the policies of the NPPF, and the combination of adverse effects on the integrity of EPS, the failure to protect and enhance protected and priority species, the lack of appropriate surface water drainage proposals and the loss of BMV agricultural land.
- 8.71 In light of this assessment, and taking into account all other material planning considerations, Officers recommend that planning permission should not be granted for this application. A recommendation for refusal is set out below at paragraph 9.1.

## **9.0 Recommendation**

9.1 REFUSE PERMISSION for the following reasons:

The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS16, CS17 & CS18 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP2, DSP6, DSP13 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan,

And paragraph 170 of the National Planning Policy Framework (NPPF), and is unacceptable in that:

- a) The provision of residential development in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside;
- b) The proposal fails to appropriately mitigate the likely adverse effects on the integrity of European Protected Sites which would arise as a result of the effect of the development on, and loss of part of, a Primary Support Area for Brent geese and waders;
- c) The proposal fails to provide sufficient information to demonstrate that protected and priority species would be protected and enhanced;
- d) The proposal fails to provide sufficient information to demonstrate the satisfactory disposal of surface water;
- e) The proposal would result in the loss of best and most versatile agricultural land;
- f) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure financial contributions towards off-site highway improvements to mitigate the impact of the development on the strategic highway network; improvements and measures to promote sustainable modes of travel; measures to mitigate the increase in traffic in the vicinity of Wicor Primary School; the introduction and/or amendment of traffic regulation orders in Beaulieu Avenue and Romsey Avenue, and; travel plan approval and monitoring fees;
- g) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance;

- h) In the absence of a legal agreement to secure the provision of public open space and contributions towards the associated management and maintenance of the open space, the recreational needs of residents of the proposed development would not be met;
- i) In the absence of a legal agreement to secure such, the proposal fails to make on-site provision of affordable housing at a level in accordance with the requirements of the local plan;
- j) In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met;
- k) In the absence of a legal agreement to secure a financial contribution towards improvements to the local public rights of way network, the proposal fails to mitigate the harm from the increased usage of public rights of way as a direct result of the development.

#### **10.0 Notes for Information**

- 10.1 Had it not been for the overriding reasons for refusal to the proposal, the Local Planning Authority would have sought to address points f) - k) above by inviting the applicant to enter into a legal agreement with Fareham Borough Council under Section 106 of the Town & Country Planning Act 1990.

#### **11.0 Background Papers**

P/18/1073/FP

# FAREHAM

BOROUGH COUNCIL



Land to South of Romsey Avenue

Scale 1:3,750

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# FAREHAM

## BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

TOWN AND COUNTRY (DEVELOPMENT MANAGEMENT  
PROCEDURE) ORDER 2015

### Planning Decision Notice

Planning Application Reference: P/18/1073/FP

Decision Date: 21<sup>st</sup> September 2020

Fareham Borough Council, as the Local Planning Authority, hereby **REFUSE** to permit the **Outline planning application for residential development of 225 dwellings, bird conservation area and area of public open space with all matters reserved except for access at LAND TO THE SOUTH OF ROMSEY AVENUE, FAREHAM as proposed by application P/18/1073/FP** for the following reasons:

The development is contrary to Policies CS2, CS4, CS5, CS6, CS14, CS16, CS17 & CS18 of the Adopted Fareham Borough Core Strategy 2011 and Policies DSP2, DSP6, DSP13 & DSP40 of the Adopted Local Plan Part 2: Development Site and Policies Plan,

And paragraph 170 of the National Planning Policy Framework (NPPF), and is unacceptable in that:

- a) The provision of residential development in this location would be contrary to adopted Local Plan policies which seek to prevent additional residential development in the countryside;
- b) The proposal fails to appropriately mitigate the likely adverse effects on the integrity of European Protected Sites which would arise as a result of the effect of the development on, and loss of part of, a Primary Support Area for Brent geese and waders;
- c) The proposal would result in extra parking restrictions being placed on Beaulieu Avenue and Romsey Avenue and on-street parking being displaced from the access road into the development site onto Romsey Avenue. As a result the development would lead to an increase in car parking on both

Beaulieu Avenue and Romsey Avenue which would be inconvenient to users of the highway and harmful to highway safety;

- d) The proposal fails to provide sufficient information to demonstrate that protected and priority species would be protected and enhanced;
- e) The proposal fails to provide sufficient information to demonstrate the satisfactory disposal of surface water;
- f) The proposal would result in the loss of best and most versatile agricultural land;
- g) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure financial contributions towards off-site highway improvements to mitigate the impact of the development on the strategic highway network; improvements and measures to promote sustainable modes of travel; measures to mitigate the increase in traffic in the vicinity of Wicor Primary School; the introduction and/or amendment of traffic regulation orders in Beaulieu Avenue and Romsey Avenue, and; travel plan approval and monitoring fees;
- h) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance;
- i) In the absence of a legal agreement to secure the provision of public open space and contributions towards the associated management and maintenance of the open space, the recreational needs of residents of the proposed development would not be met;
- j) In the absence of a legal agreement to secure such, the proposal fails to make on-site provision of affordable housing at a level in accordance with the requirements of the local plan;
- k) In the absence of a legal agreement to secure contributions to education, the needs of residents of the proposed development would not be met;
- l) In the absence of a legal agreement to secure a financial contribution towards improvements to the local public rights of way network, the proposal fails to mitigate the harm from the increased usage of public rights of way as a direct result of the development.

# **Notes to Accompany Planning Decision Notice**

Planning Application Ref: P/18/1073/FP

Decision Date: 21<sup>st</sup> September 2020

## **General Notes for Your Information:**

- Had it not been for the overriding reasons for refusal to the proposal, the Local Planning Authority would have sought to address points g) - l) above by inviting the applicant to enter into a legal agreement with Fareham Borough Council under Section 106 of the Town & Country Planning Act 1990.
- The documents considered in relation to this application can be viewed online at [www.fareham.gov.uk/planning](http://www.fareham.gov.uk/planning).
- The Council worked positively and proactively with the applicant and their agent to try and address the issues which came up during the course of the application being considered. A report has been published on the Council's website to explain how a decision was made on this proposal.
- Please contact the officer who handled this application Richard Wright on 01329 824758 or at [rwright@fareham.gov.uk](mailto:rwright@fareham.gov.uk) if:
  - You would like clarification about this notice
  - You are unhappy with this decision or the way it has been reached

## **Right of appeal:**

- The person who made this application has the right to appeal to the Secretary of State against the Council's decision to refuse permission.
- The Secretary of State may decide he will not consider an appeal if it seems to him that, due to statutory requirements, the local planning authority could not have granted permission without the conditions being imposed.
- Appeals must be made within 6 months of the date of this decision notice (so by 21<sup>st</sup> March 2021).
- The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- Appeals are handled by the Planning Inspectorate on behalf of the Secretary of State. Appeals must be made using a form which you can get from:
  - Initial Appeals, The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN;

- Or submit online at The Planning Inspectorate website at
- [www.gov.uk/planning-inspectorate](http://www.gov.uk/planning-inspectorate)

**Purchase Notices:**

- If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that the owner can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council. This notice will require the Council to purchase the owner's interest in the land.



# **The Ecology Co-op**

ENVIRONMENTAL CONSULTANTS

Unit 4 Langham Stables, Langham Lane, Lodsworth, West Sussex GU28 9BU

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## **Proof of Evidence on European Site Matters**

**APPEAL AGAINST THE DECISION OF FAREHAM BOROUGH COUNCIL TO  
REFUSE OUTLINE PLANNING PERMISSION FOR:**

**THE RESIDENTIAL DEVELOPMENT OF 225 DWELLINGS, BIRD CONSERVATION  
AREA AND AREA OF OPEN SPACE WITH ALL MATTERS RESERVED EXCEPT FOR  
ACCESS**

Land South of Romsey Avenue, Fareham

Paul Whitby  
Principal Ecologist/Director  
The Ecology Co-op

## 1. PERSONAL INFORMATION

1.1. My name is Paul Whitby and I am the Managing Director and a Principal Ecologist at the Ecology Co-op. I have a Bachelor of Science degree in Environment, Economics and Ecology, I am a member of the Chartered Institute for Ecology and Environmental Management (CIEEM), and further, I am a Chartered Ecologist through CIEEM. I have 15 years' experience as an ecologist, including the production of Ecological Impact Assessments, designing mitigation schemes for developments and undertaking Habitats Regulations Assessments. I have experience as an expert witness on ecology matters, having appeared at several planning appeals.

## 2. SCOPE OF EVIDENCE

2.1. I am providing this Proof of Evidence on behalf of the appellants, Foreman Homes, in support of a development proposal to build 225 new dwellings (including 40% affordable housing), provide a significant offering of public open space and create a new bird conservation area. The evidence I have prepared is true and is based on my professional opinion, in line with a professional code of conduct as required under my CIEEM membership.

2.2. The planning application for this development was refused by Fareham Borough Council (the LPA) on the 21<sup>st</sup> September 2020. My proof has been prepared to address reasons for refusal b and d, as provided by Fareham Borough Council, which is as follows:

*b) "The proposal fails to appropriately mitigate the likely adverse effects on the integrity of European Protected Sites which would arise as a result of the effect of the development on, and loss of part of, a Primary Support Area for Brent geese and waders"*

*d) "The proposal fails to provide sufficient information to demonstrate that protected and priority species would be protected and enhanced"*

2.3. Separately, reason for refusal h) states that, *"In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance"*. This is seen as a legal issue that will be dealt with separately and is covered within a separate Habitats Regulations Assessment and will be addressed in the Proof of Evidence produced by Mr Brown on behalf of the appellant. Whilst reason for refusal d) is relevant to my proof with respect solely to brent geese and wading birds, this reason for refusal will be the focus of Mr Day, who is providing evidence for 'on site ecology and nature conservation'.

2.4. This document has been produced to provide information to the Planning Inspector at an appeal hearing for the refused application of the development of Land South of Romsey Avenue, Fareham. It discusses only reasons for refusal b and d as outlined by Fareham Borough Council, with no other objections raised by the LPA with respect to the ecological surveys, assessment of protected species impacts or proposed mitigation with respect to habitats and species at the site.

2.5. Further to reasons for refusal b) and d) provided by the LPA, this document also aims to address an objection raised by Natural England. In their written statement on 26/08/2020<sup>1</sup>, Natural England produced the following objection response:

*"The application is likely to have a significant effect on the Portsmouth Harbour SPA and SSSI and the Council is advised to undertake an Appropriate Assessment under The Conservation of Habitat and Species Regulations 2017."*

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<sup>1</sup> Planning Consultation response by Natural England, 26/08/2020, NE ref: 324982

*The proposal will result in a loss of supporting habitat. There is uncertainty as to whether the mitigation measures proposed are likely to protect the integrity of the designated sites.”*

- 2.6. Within the detail of their response, Natural England further discussed the identification of the site as a ‘primary support area’ for brent geese within the Solent Waders and Brent Goose Strategy (SWBGS) and the need for a suitable replacement site of appropriate habitat, area, disturbance and location. For primary support areas this is understood to be a requirement for an offsetting area that can fulfil ‘the same special contribution and particular function of the areas lost or damaged for the same species of birds’.
- 2.7. The SWBGS has been produced by the Solent Waders and Brent Goose Steering Group to inform both strategic planning strategies by LPAs and individual development proposals. Its principle objective states that it is ‘to ensure that sufficient feeding and roosting resources continue to be available and the integrity of the network of sites is restored and maintained, in order to ensure the survival of the Solent’s coastal bird populations. The underlying principle is to, wherever possible, conserve extant sites and to create new sites, enhancing the quality and extent of the feeding and roosting resource’.
- 2.8. The outline planning application for the development of the Land South of Romsey Avenue has been supported by the following documents:
- an Ecological Impact Assessment, Ecosupport (2018)
  - a Biodiversity Mitigation and Enhancement Plan, fpcr (2021)
  - a Biodiversity Net Gain Assessment, fpcr (2021)
  - Bird Mitigation Reserve Proposals, Lindsay Carrington Ecological Services (2020)
  - a Shadow Habitats Regulations Assessment (HRA), fpcr (2021)
- 2.9. All of these documents and data gathered from a range of protected species surveys (some of which are being updated at the time of writing) have been consolidated within a new Environmental Statement (ES) Chapter concerning Ecology (Chapter 10). This ES has been compiled by the Temple Group, with the Chapter on Ecology completed by FPCR and this Proof of Evidence will directly reference the content of the Ecology Chapter of this ES rather than the older EclA by Ecosupport.
- 2.10. Separately, the Appellant’s appointed ecologists have consulted with Natural England in order to try and meet agreement on the proposed mitigation for wintering wading birds and brent geese. Supporting documents and correspondence that will be referenced includes:
- Response To Natural England Objection of Bird Mitigation Reserve Proposals for Land off Romsey Avenue, Portchester, Lindsay Carrington Ecological Services (2020).
  - Natural England DAS response (2020).
- 2.11. Of particular consideration within the proposals is a mitigation strategy for the site that was originally designed by Ecosupport, modified by Lindsay Carrington Ecological Services and finally has been refined by FPCR within

Chapter 10 of the ES. Details of this mitigation strategy, with particular focus on the creation of a new bird reserve, is detailed within Chapter 10 of the ES and a separate Biodiversity Mitigation Enhancement Plan.

### 3. SITE AND CONTEXT

- 3.1. The Site comprises of a 12.6ha parcel of arable land situated to the south of Romsey Avenue in Fareham. This arable field is fringed by species-poor hedgerows on the eastern, southern and western boundaries, whilst the gardens of residential properties create a varied boundary including hedging and fence lines. The east of the site is bordered by a new development referred to as 'Land North of Cranleigh Road/West of Wicor Primary School, Porchester, Fareham', which was granted permission upon appeal on the 23<sup>rd</sup> March 2016 and is presently under construction. To the south the site is bordered by another arable field, the grounds of AFC Porchester football club and Wicor Recreation Ground. To the west the site is bordered by another arable field and an area of pasture.
- 3.2. The site is made up of a single cultivated arable field that has been managed for spring cereals for the last five years, but is presently sown with spring beans. The land is not presently, nor has previously been, managed under a stewardship scheme and has very narrow field margins. Habitats recorded from the Phase 1 Habitat survey of the site include arable land, improved grassland, tall ruderal, scattered scrub, hedgerows and trees.
- 3.3. At its closest point the site is situated 0.2km from the Portsmouth Harbour SPA, 5.14km from the Solent and Southampton Water SPA and 6.83km from the Chichester and Langstone Harbour SPA. The Portsmouth Harbour SPA lies directly south of the site and comprises a large and industrialised estuary that supports mudflats with beds of narrow-leaved and dwarf eel grass, on which brent geese forage whilst exposed at low tide.

#### 4. RELEVANT POLICY

4.1. The Fareham Borough Core Strategy (2011) sets out policies designed to shape the Local Development Framework. Of relevance to this appeal are Policy CS4, which sets out a hierarchy for the protection of habitats important to the biodiversity of the Borough. The Fareham Local Plan 'Part 2' includes two policies of relevance to brent geese, wading birds and European Protected species sites as follows:

Policy DSP14: Supporting Sites for Brent Geese and Waders

*Development on 'uncertain' sites for Brent Geese and/or Waders (as identified on the Policies Map or as updated or superseded by any revised plans, strategies or data) may be permitted where studies have been completed that clearly demonstrate that the site is not of 'importance'.*

*Development on 'important' sites for Brent Geese and/or Waders, (as identified on the Policies Map or as updated or superseded by any revised plans, strategies or data) may be granted planning permission where:*

- i. it can be demonstrated that there is no adverse impact on those sites; or*
- ii. appropriate avoidance and/or mitigation measures to address the identified impacts, and a programme for the implementation of these measures, can be secured.*

*Where an adverse impact on an 'important' site cannot be avoided or satisfactorily mitigated, an Appropriate Assessment will be required to determine whether or not the proposed development would have an adverse effect on the integrity of the Special Protection Areas supporting sites. Where an adverse effect on the integrity of a Solent Special Protection Area cannot be mitigated, planning permission is likely to be refused.*

Policy DSP15: Recreational Disturbance on the Solent Special Protection Areas (SPA)

*In Combination Effects on SPA:*

*Planning permission for proposals resulting in a net increase in residential units may be permitted where 'in combination' effects of recreation on the Special Protection Areas are satisfactorily mitigated through the provision of a financial contribution that is consistent with the approach being taken through the Solent Recreation Mitigation Strategy. In the absence of a financial contribution toward mitigation, an Appropriate Assessment will be required to demonstrate that any 'in combination' negative effects can either be avoided or satisfactorily mitigated through a developer provided package of measures.*

*Direct Effects on Special Protection Areas:*

*Any application for development that is of a scale, or in a location, such that it is likely to have a direct effect on a European-designated site, will be required to undergo an individual Appropriate Assessment. This may result in the need for additional site-specific avoidance and/or mitigation measures to be maintained in perpetuity. Where proposals will result in an adverse effect on the integrity of any Special Protection Areas, planning permission will be refused.*

4.2. Fareham Borough Council is presently consulting on its Local Plan 2037, which is identified as a Publication Local Plan ahead of being formally adopted. The most relevant policy identified in this document is as follows:

Strategic Policy NE1: Protection of Nature Conservation, Biodiversity and the Local Ecological Network

*Development will be permitted where:*

- a) Designated international, national sites and local sites of nature conservation value are protected and enhanced, reflecting their status in the hierarchy of nature conservation designations; and*
- b) Protected and priority habitats and species, including breeding and foraging areas are protected and enhanced; and*
- c) Proposals do not prejudice the Ecological Network or result in its fragmentation.*

*Development within the Borough whose primary objective is to conserve and enhance biodiversity (including the Local Ecological Network), geodiversity and natural resources through restoration, re-creation or management will be supported.*

*Policy NE3: Recreational Disturbance on the Solent Special Protection Areas (SPAs)*

*Planning permission for proposals resulting in a net increase in residential units will be permitted where a financial contribution is made towards the Solent Recreation Mitigation Strategy.*

*In the absence of a financial contribution towards the Solent Recreation Mitigation Strategy, proposals will need to avoid or mitigate any ‘in combination’ negative effects from recreation through a developer-provided package of measures for the lifetime of the development.*

*Policy NE5: Solent Wader and Brent Goose Sites*

*Sites which are used by Solent Waders and/or Brent Geese (as shown on the Policies map) will be protected from adverse impacts commensurate to their status in the hierarchy of the Solent Wader and Brent Geese Network.*

*Core and Primary Support Areas*

*Development on ‘Core and Primary Support Areas’ (as shown on the Policies map) will only be permitted where:*

- a) The proposal has avoided or adequately mitigated impacts on-site and there is an overall net gain to the Solent Wader and Brent Geese Network; or*
- b) Where it can be clearly demonstrated that criteria a is not feasible or practicable, a suitable, readily available replacement site which conforms entirely to the specific requirements for the Solent Waders and Brent Geese species concerned and is satisfactorily agreed by the Council and other appropriate bodies is provided and secured for the lifetime of the development.*

## 5. ROLE OF THE SITE IN RESPECT TO THE SOLENT WADING BIRD AND BRENT GOOSE STRATEGY

- 5.1. The reason for refusal by the LPA and Natural England's objection both cited a likely significant effect of the development proposal on the Portsmouth Harbour Special Protection Area (SPA) and the loss of supporting habitat used by brent geese and wading birds as identified in the Solent Wading Birds and Brent Goose Strategy (SWBGS). This objection is centred on the identification of the site within the SWBGS as a Primary Support Area (identified within the SWBGS under parcel reference F21) and the loss of such a site requires detailed proposals for the provision of an appropriate replacement site that is assessed according to the habitat type, size, disturbance risks, geographical location and the timing and availability of this habitat. For clarity, the site does not form part of any SPA and is not a candidate SPA site, thus the development proposals will not in any way directly impact SPA habitat.
- 5.2. The identification of parcel F21 as a Primary Support Area is based on the identification of 300 brent geese recorded across two wintering periods on 19/11/2012 and 19/11/2013. The majority of data gathered to support the SWBGS is understood to have been gathered by The Hampshire County Council Ecology team and volunteers that have been collecting data for a number of years. Whilst a request was made for the specific details of the records for parcel F21, none could be provided by the Hampshire Biodiversity Records Centre and it is not therefore known if this data was made by a member of the public or a professional Ecologist. This is an important consideration, given the presence of other species of geese and data accuracy, particularly as Canada geese were recorded frequently on the fields and have been identified by the farmer as responsible for past crop damage and misidentification is possible. It should be noted that past iterations of the SWBGS from 2002 and 2010 did not identify parcel F21 as a primary support area and these records are the sole reason for the inclusion of this land within the SWBGS.
- 5.3. To qualify as a Primary Support Area, five separate metrics are used to create a combined score. These metrics use the highest counts recorded for a site to come up with a value that determines if a site is valued as a Core Area, Primary Support Area, Secondary Support Area, Low Use Site or Candidate Site. These designations are therefore entirely based on the data generated from records submitted to biodiversity record centres.
- 5.4. A Primary Support Area is identified as the second most important site by ranking behind a 'Core Area' outside of the Solent SPA sites. Primary Support Areas are considered to have importance to the integrity of the Solent SPA sites due to the support they are able to provide for foraging brent geese and wading birds and the SWGBS 'Guidance on Mitigation and Off-setting Requirements' (2018) states that "*Primary Support Areas are land that, when in suitable management, make an important contribution to the function of the Solent waders and brent goose ecological network*". The underlined part of this statement is a critical consideration, as suitable management has not been implemented at the site since autumn 2014, due to continued damage to winter cereal crops by Canada geese that was identified by the farmer. This crop damage made a winter crop rotation unviable and led to the start of spring crop

management. This new management strategy means that suitable foraging habitat is not present during the winter and illustrates that the site cannot act as a Primary Support Area and has not done so since 2014.

- 5.5. The lack of suitability of a cultivated arable field and consideration of the changes in land management practices is explained within the most recent SWBGS (2020), where under section 3.3 'Limitations of the Data', it states that:

*"The use of some sites will vary if the land use or management changes. For example, if a field is ploughed or allowed to scrub over, it will no longer be suitable to for use. The data therefore can only reflect the use of sites as dictated by their management regime during the study period."*

It is quite clear that a ploughed bare field cannot provide foraging value for brent geese that graze upon short swards.

- 5.6. The habitat value of the site is an important consideration when evaluating the suitability of this site for brent geese. Within section 10.4.29 of the ES it is highlighted that the two records of 300 brent geese in 2012 and 2013 coincide with years when the site was sown with winter wheat and winter oats. Table 10.5 within the ES (and section 3.40 of the shadow HRA) further provides a useful history of the management of the site, the context of which is crucial in forming a more detailed assessment of its value above the bird count data only approach that is possible within the SWBGS.
- 5.7. Due to the extensive damage caused by geese to these winter cereal crops in 2012 and 2013, the management regime at the site changed in the autumn of 2014 to incorporate a spring sowing cycle only. Under a spring sowing regime, each year following harvest, the remaining stubble crop is left to stand until November so that arable weeds are allowed to germinate, at which time the field is ploughed to leave the field bare until seeds are sown in February. In contrast, winter sown cereals provides grazing habitat for brent geese as crops sown in September will germinate to provide a short sward of young shoots through the winter that provide a foraging resource for geese. Spring sown cereals crop cycles do not provide this, with the ground remaining bare between ploughing in November and germination of seeds in late March. Brent Geese typically arrive in the UK in October and leave across March and April.
- 5.8. Considering the above, I believe consideration of real value of the site for brent geese is required. Since the permanent change to a spring crop cycle in 2015 (which would have begun in Autumn 2014), only a single brent goose has been observed at the site in 2017 and wintering birds surveys undertaken by Lindsey Carrington Ecological Services across the winters of 2014–2015 and 2016–2017 failed to identify the use of the site by brent geese, though 20 curlew were recorded in March 2014. This change in value at the site mirrors the consideration of Land Management discussed in section 5.4 of the SWBGS, which states that "Ploughed fields, stubble and certain crop types are unsuitable for these birds".
- 5.9. Within section 10.4.34 of the ES this change in the value of the site for brent geese is appropriately considered, with the historical value of the site measured as being of 'county importance', whilst under the current

management, and in the absence of suitable winter foraging habitat, the site is considered to be of 'local importance'. This conclusion is further highlighted within sections 3.45 and 3.46 of the shadow HRA, whereby the metric calculations provided within the SWBGS are re-applied to incorporate the data gathered between 2014 and 2021 (since the change in arable management). With these new values, the site would be re-classified as a 'Low Use Site' (sites which has records of birds but in low numbers). Specifically for brent geese (in the absence of wading bird records), the site would be considered a 'candidate site'.

5.10. Wading birds have also been recorded using the site, with counts of 26 and 15 curlew in December 2013 and February 2014 respectively returned from biodiversity records, whilst a wintering bird survey in March 2014 also identified 20 curlew. A single oystercatcher was recorded in January 2013 from biodiversity records, though this record is centred on land to the south of the site (whilst still inside F21). The use of the site by wading birds is considered in a very different context, with wading birds relying more heavily on foraging of the intertidal zone across the SPA sites, with more limited foraging activity inland. Whilst records do not include particular behavioural observation, the presence of these birds can be due to their use of the site as a refuge at high tide (when their preferred foraging habitat is unavailable or during poor weather), or it may be a combination of use as a refuge and foraging. Wading birds including oystercatcher and curlew feed on small invertebrates living in intertidal muds and sediments or in damp soil, which strongly contrasts with the grazing behaviour of brent geese.

5.11. The use of the site by wading birds is not considered to be important to the integrity of the Solent SPA sites, as in isolation these records qualify the site as 'low use' only, as detailed in the Shadow HRA produced by fpcr in sections 3.45 and 3.46. Low Use sites receive a score of 0 within the SWBGS metric and the SWBGS defines low use sites as having records of birds, but in low numbers.

## 6. SCHEME DESIGN AND PERFORMANCE

- 6.1. The design and management of a bird reserve that would appropriately offset the impact of the development proposals upon wading birds and brent geese has been set out in the Bird Mitigation Reserve proposals produced out by Lindsay Carrington Ecological Services (August 2020), with further detail included section 10.6.29 and Appendix F4 of the ES. The Bird Mitigation Reserve document was produced to design an appropriate off-sett for the loss of a winter grazing site that supports 300 brent geese, in line with the request by Natural England made through the Discretionary Advice Service. The reserve has further been designed to provide habitat for other local wading bird populations, including curlew and oystercatcher that have been identified at the site previously and a variety of other bird species including kingfisher and sand martin.
- 6.2. The proposed bird reserve measures 4.2 ha in area, with 3.7 ha of this reserve dedicated to provide optimal foraging habitat for brent geese comprising a nitrogen rich short sward comprising 80% white clover and 20% perennial rye grass. The approximate dimensions are 250m wide and 150m high, making the reserve approximately the size of 6 football pitches. The size of the proposed bird reserve is comparable to other core and primary support areas identified within the SWBGS, including parcel G47, which measures 3.26 ha and has supported up to 1200 brent geese. Details of similar core and support areas are provided in Table 13 and subsequent text from pages 31-35 of the Shadow HRA produced by fpcr.
- 6.3. The reserve is located at the southern end of the site to ensure it bordered as much as possible by open arable habitat and although there are short hedgerows and tree lines bounding the reserve to the south, east and west, the site maintains a close connection to the coast, ensuring it has a high potential to be adopted by brent geese and wading birds leaving the intertidal areas of Portsmouth Harbour at high tide.
- 6.4. Careful consideration has been made to ensure that the bird reserve will be protected from disturbance and managed sensitively to ensure the greatest potential for adoption by brent geese and wading birds. A protective fence will be installed to prevent the public and potential predators such as foxes or dogs from entering the reserve. The fence will be 2 metres high and will have anti-climb measures in place, whilst a hide installed on the edge of the reserve will still allow people to observe and enjoy birdlife at the reserve. A second measure to help ensure security of the boundary will be the establishment of a ditch. This ditch will itself be managed for wildlife interest, with native reeds and bulrushes planted to provide habitat for reed, sedge and cetti's warbler. These tall reeds and bulrushes will also help create some screening of the reserve from the development to the north.
- 6.5. The creation of an optimised foraging habitat by sowing a nitrogen-rich white clover and perennial rye grass mixture for brent geese is an important consideration of the value of the reserve. Brent geese will prioritise grazing effort at sites where the greatest energy and nutrients can be obtained and the creation of an optimised grazing resource therefore both increases the potential for the reserve to be adopted by brent geese and ensures the reserve

provides a significant benefit. Importantly, the reserve will be established in the spring, with the sward given time to establish before brent geese typically arrive from Siberia in October and the reserve will be fully established and complete before any work commences on the housing development.

- 6.6. Following successful establishment, the sward will be managed with regular cutting through the summer up until September, when a final cut to a height of approximately 5cm will be made to ensure the site is not disturbed when the gees arrive in October and the sward is at an optimal height for foraging. Whilst brent geese do graze upon winter cereals, both the maintenance of the short sward and the growth of a sward optimised for its nutritional value means this would provide better foraging habitat than the more inconsistent and changing management within an arable system.
- 6.7. To ensure habitat for curlew and oystercatcher is created, wetter areas off the site will be created, including a central scrape that will have a graded depth of 2 feet and will create softer muddier areas that wading birds can forage in.

## 7. IMPACT OF THE DEVELOPMENT ON SPA SUPPORTING HABITAT

- 7.1. Throughout the consultation process with Natural England a focus has remained on the impact to brent geese from the loss of a Primary Support Area, identified to support 300 brent geese in 2012 and 2013 and the need to provide adequate mitigation for this loss. The reliance upon the guidance provided within the SWBGS is understood, however, there are a number of factors that can make the reliance of the data used within the metrics to allocate sites, unreliable in a current context.
- 7.2. It has been clearly illustrated within section 5 of this proof that the site has neither supported suitable habitat for brent geese since Autumn 2014, or has any significant records for brent geese since this time, with only a single individual recorded since 2017. In contrast, the development proposal offers the creation of a permanent foraging habitat that will be managed in perpetuity as a bird reserve for the benefit of brent geese and wading birds, as explained within section 6 of this proof.
- 7.3. Considering both this new weighting to the value of the site for brent geese, the mitigation proposals that have been produced, as set out within section 10.6.29 and detailed within Appendix F4 of the ES would appear to be wholly adequate, through the provision of a new permanent suitable foraging resource to replace a highly unfavourable habitat resource for this species.
- 7.4. Whilst there has been disagreement between Natural England and the appellant on the suitability of the proposed bird reserve to support 300 foraging brent geese, it has been illustrated that both similar sized and indeed smaller sites have supported greater numbers of brent geese. The bird reserve is clearly also a significant improvement on the value of the site as managed under a spring cereal crop rotation and it can therefore be concluded that the impact of the development proposals upon SPA supporting habitat is positive.

## 8. IMPACTS UPON SOLENT SPA SITES

- 8.1. The impacts upon the Portsmouth Harbour SPA, and the Solent and Southampton Water SPA in addition to other Natura 2000 sites is considered within the Shadow HRA. Within the Shadow HRA a standard approach to mitigating the increase in recreational disturbance created through new residential development has been adopted. Within section 3.8 of the HRA it is explained that “Policy NE3 of the Fareham Borough Local Plan provides a financial mechanism through which the impacts of recreational disturbance from new residential developments can be mitigated. Policy NE3 is implemented through the Solent Bird Aware Solent Recreation Mitigation Strategy”. Details of developer contributions required for each new dwelling is further set out in section 3.9 and in section 3.10 it is concluded that a development contribution of £145,027 will be required to adequately mitigate the effects of increased recreational disturbance on the Solent SPAs. The legal framework through which this contribution is agreed is not considered here, but it is clear that appropriate mitigation for new development impacts can be incorporated for the anticipated increase in recreational pressure.

8.2. As Primary Support Sites are considered to have a functional link with the Solent SPA sites, a key consideration of the impact of this development proposal upon these parcels of land has been the potential loss of foraging habitat for brent geese and other wading birds during high tide. As set out within section 3.74 of the shadow HRA and section 7 of my proof, site F21 has been identified not to act as supporting habitat since 2014. Following a change in arable management, its loss would not impact on the condition feature (dark bellied brent geese or other wading bird species) in relation to the Solent Protected Sites Network.

## 9. RESPONSE TO REASON FOR REFUSAL AND NATURAL ENGLAND OBJECTION

- 9.1. The reason for refusal b) provided by Fareham Borough Council appears to have been largely based upon the objection held by Natural England with respect to the perceived adverse impact that would result in the loss of part of a Primary Support Area for brent geese and waders.
- 9.2. Part of the objection raised by Natural England is founded upon the principle of implementing the recommendations of the SWBGS, based upon the data provided for parcel F21. At the time of the application and subsequent consultation process, it is unfortunate that consideration of the land management of the site was not considered in assessing the real value of the site, rather than relying solely on historical records. Within the original ES produced by Ecosupport in 2018 to support the application, an erroneous data record was made, indicating that two records of 300 brent geese were identified from 2017. It is important to note that this record was an error and also that Natural England in considering this record within the ES had a false perception of the use and indeed the value of the site for brent geese.
- 9.3. Within this proof, the revised Environmental Statement and Shadow HRA, further detail has been provided that requires fresh consideration, as parcel F21 clearly does not act as supporting habitat to the Solent SPA sites and historically only appears to have supported brent geese periodically. The principle for assessing the value of a site to support wading birds and brent geese based on its habitat value is supported within the SWBGS (see section 7.2 above) and it is clear that the site has not been identified to support any significant numbers of brent geese since the arable management at the site changed to focus on spring cereals.
- 9.4. The Bird Mitigation Reserve design as set out by Lindsay Carrington Ecological Services was designed to support at least 300 foraging brent geese. Whilst agreement on the value of this bird reserve was not reached with Natural England, given the present value of the site for brent geese, I am confident that agreement can be reached that this reserve far exceeds the requirement to support very low numbers of brent geese, with only a single individual identified since 2013. This same conclusion can be provided for curlew and oystercatcher, with the site not identified to be of particular importance for these birds and the size of the bird reserve clearly sufficient to support the historical numbers identified.
- 9.5. The other part of the objection raised by Natural England was the likely significant effect of the development upon the Portsmouth Harbour SPA and SSSI, with an Appropriate Assessment recommended. A Shadow HRA has now been produced by fpcr that clearly sets out all of the effects and appropriate mitigation and compensation measures required to ensure that there will be no effect on the conservation objectives and the integrity of the Solent SPA sites.

## 10. CONCLUSIONS

- 10.1. Whilst it is accepted that the original application by Foreman Homes lacked some detail on the likely impact of the proposals upon Natura 2000 sites and brent geese, it is felt that the additional information about the use of the site by brent geese and the changing historical picture of habitat suitability at the site for this species indicates that whilst identified as a Primary Support Area based on past records, the functional value of the site is much lower than that afforded within both the planning determination and within the DAS response by Natural England. The site has also been identified to have some limited value for curlew and oystercatcher, which given the small numbers of these birds that has been identified, leaves little doubt that the bird reserve is a suitable size to support the same or greater numbers and Natural England has not raised any concerns over the design or size of the bird reserve to support curlew and oystercatcher.
- 10.2. The DAS with Natural England was made solely upon the value attributed to the site as a support area for the Solent SPA sites, without consideration of the suitability of this land to support foraging brent geese in a current context. The value of the site to support brent geese has now been set out clearly within the ES and shadow HRA and fresh consideration of the real impact of this development upon the Solent SPA sites and brent geese is required.
- 10.3. The Mitigation provided within the scheme for 3.7ha of new grazing habitat as set out within the Biodiversity Mitigation Enhancement Plan, therefore, is now considered to provide a permanent habitat of value for foraging brent geese and wading birds that could provide a permanent enhancement feature of value to the wider Solent Protected Sites Network.
- 10.4. This new consideration of the effect of the development proposals upon a support area for brent geese and the clear strategy of how the effects of development near to the Solent SPA sites can be offset within the Shadow HRA supporting this appeal also make it clear that there will not be any anticipated residual negative effects upon the integrity of these protected sites. Conversely, I feel the creation a new permanent foraging resource for wading birds and brent geese under stable management provides an opportunity to create an enhancement above the existing value of the site.

**APPLICATION No: P/18/1073/FP**

**APPEAL REF: APP/A1720/W/21/3271412**



Town and Country Planning Act 1990

Appeal by Foreman Homes Ltd.

**Land south of Romsey Avenue, Portchester, Hants.**

**PROOF OF EVIDENCE:  
“ON SITE” ECOLOGY & NATURE CONSERVATION**

Mr Adam Day, BSc (Hons), MSc, ACIEEM

July 2021

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## **APPENDICES**

**Appendix 1: Hampshire County Council consultation response, 5<sup>th</sup> October 2018**

**Appendix 2: Hampshire County Council consultation response, 27<sup>th</sup> August 2020**

**Appendix 3: Appendix F6 Biodiversity Net Gain Assessment Plan rev B (July 14<sup>th</sup> 2021 update)**

**Appendix 4: Nitrogen Budget Calculation Spreadsheet (July 15<sup>th</sup> 2021 update)**

## **RELEVANT DOCUMENTS TO CONSIDER IN CONJUNCTION**

ENVIRONMENTAL STATEMENT (ES) CHAPTER 10: ECOLOGY AND BIODIVERSITY INCLUDING THE FOLLOWING APPENDICES;

F1: FPCR ECOLOGY SURVEY 2021

F2: 2018 ECOSUPPORT SURVEY RESULTS

F3: PHASE 1 HABITAT PLAN

F4: BIODIVERSITY MITIGATION AND ENHANCEMENT PLAN

F5: 2020 BRENT GOOSE MITIGATION PLAN

F6: BIODIVERSITY NET GAIN ASSESSMENT

F7: SHADOW HRA

FRAMEWORK LANDSCAPE & ECOLOGICAL SPECIFICATION & MANAGEMENT PLAN

FRAMEWORK CONSTRUCTION TRAFFIC ENVIRONMENTAL MANAGEMENT PLAN (STEWART MICHAEL ASSOCIATES, JUNE 2021)

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**DECLARATION**

**“The evidence which I have prepared and provide for this appeal reference P/18/1073/FP is true and has been prepared and is given in accordance with guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions”.**

## **1.0 INTRODUCTION**

### **Personal Details**

- 1.1 I am Mr Adam Paul Day, and this Proof of Evidence (PoE) has been prepared on behalf of the Appellant (Foreman Homes Ltd.).
- 1.2 I hold an Honours Degree in Environmental Science from the University of Plymouth and a Master of Science Degree in Environmental Consultancy from the same University. I am an Associate Member of the Chartered Institute of Ecology and Environmental Management. I have over ten years' experience as an Ecological Consultant and Environmental Assessor. I hold Natural England survey licenses for bats, barn owl and great crested newts. I am routinely involved in site selection, constraints analysis, mitigation to minimise environmental impacts, detailed design involving habitats and protected species for complex multi-phased schemes and dealing with biodiversity net gain (BNG). I have experience of writing a variety of technical Environmental Impact Assessment documents, including Environmental Statements and shadow Habitat Regulations Assessments.
- 1.3 I am a Principal Ecologist at FPCR Environment and Design Ltd, a multi-disciplinary Company of Architects, Landscape Architects, Ecologists and Arboriculturalists with over fifty years' experience of award-winning development projects.
- 1.4 Our environmental expertise has been utilised by numerous nationally known client bodies to facilitate development where appropriate, close to sensitive sites. FPCR is now one of the country's leading ecological consultancies acting on behalf of clients such as English Heritage and were contracted by Natural England to run the 'Bat Line Service' for the East Midland's Region from 2000 until December 2012. FPCR have played an integral role in the development of the DEFRA metric 2.0 for BNG, designing pioneering net gain schemes and setting up some of the UK's first private Biodiversity Banks.
- 1.5 The evidence which I have prepared and provided for this appeal is true and has been prepared and is given in accordance with guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

### **Background and Appointment**

- 1.6 FPCR were originally appointed by the Appellant in April 2021 to complete an update ecological assessment of the Application Site (hereafter referred to as the 'Site'). Ecological Assessment of the Site had previously been undertaken by Ecosupport and Adam Day, whilst working for Lindsay Carrington Ecological Services Ltd (LCES). The original submissions evaluated the potential ecological constraints of the Site and the proposals for an outline planning application for 225 dwellings, bird conservation area and area of public open space, with all matters reserved except for access.
- 1.7 FPCR's assessment purposes were to update survey information with regard to the appeal process for this application. This assessment confirmed the ecological receptors within the Site are of limited ecological importance. The nearby Portsmouth Harbour Special Protection Area (SPA) and network of Solent statutory protected sites were the ecological receptors of most importance identified by all ecological assessments, which are dealt with in a separate Proof of Evidence (PoE).

- 1.8 This PoE specifically covers Reason for Refusal (RfR) d.), relating to protected species recorded on the Site. It does not address the on-Site and off-Site RfR in relation to the Solent SPA sites, including in relation to qualifying species dark-bellied brent goose *Branta bernicla bernicla* and curlew *Numenius arquata*. It addresses the proposals submitted to Fareham Borough Council (FBC) over the determination periods and the updated proposals submitted to this Appeal in June 2021.
- 1.9 This PoE refers to the baseline ecological information obtained over the extended survey period of 2017 - 2021, ecological impact assessment provided, relevant mitigation where appropriate, and enhancements proposed by the development. Further, it addresses biodiversity net gain ("BNG"). Technical Notes detailing the BNG assessment for the submitted and revised Appeal scheme illustrative layout are provided, as well detail in relation to construction and operational mitigation to inform the proposed management documents at Reserved Matters.
- 1.10 The PoE is presented in the following Sections:
- Section 2: Legislation, Relevant Planning Policy & Guidance
  - Section 3: Reason for Refusal and Identification of Issues
  - Section 4: Ecological Information
  - Section 5: Ecological Baseline
  - Section 6: Ecological Influences, Design and Proposed Mitigation
  - Section 7: Assessment of Potential Effects
  - Section 8: Biodiversity Net Gain (BNG)
  - Section 9: Legal and Policy Compliance
  - Section 10 Response to Reasons or Refusal
  - Section 11: Summary & Conclusions
- 1.11 It is my view that the information provided for this Appeal is comprehensive, and a robust level of survey, assessment and review has occurred in relation to the Site and proposed development (including by the Council and relevant statutory bodies). Indeed, there is greater level of assessment than would normally be expected for such a site, which is of medium size and low ecological significance.
- 1.12 Overall, I consider the Site and ecological receptors within the Site to be of low ecological importance with a capacity for development, which would not result in more than low level and insignificant harm. I conclude that there are no reasons relating to matters of ecology, biodiversity and the relevant regulatory framework (including HRA), which prevent the Appeal being allowed

## **2.0 RELEVANT LEGISLATION, PLANNING POLICY & GUIDANCE**

- 2.1 The following section reviews planning policy, legislation, and key guidance relevant to this Appeal. Whilst Mr Brown generally deals with planning policy, I briefly address relevant policy, legislation and key guidance.

### **Legislation**

#### **The Conservation of Habitats & Species Regulation 2017 (as amended)**

##### Designated Sites

- 2.2 The Conservation of Habitats and Species Regulations 2017 (*as amended*), (hereafter referred to as the 'Habitat Regulations'), provides the legislative framework to protect a network of sites where rare or important habitats and species are present in order to protected biodiversity. These sites are listed on the National Site Network.
- 2.3 Competent Authorities have a duty under the Regulations regulated activities they authorise to ensure 'no adverse effect on the integrity of a Natura 2000 site or a site listed on the National Site Network'. Regulation 63 requires:
- '63(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for a plan or project, which:*
- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and*
- (b) is not directly connected with or necessary to the management of that site,*
- must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.*
- 63(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.*
- 63(5) In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).*
- 63(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.'*
- 2.4 Where projects potentially affect site's listed on the National Site Network, Regulation 63(1) outlines the two-stage assessment process. This confirms the competent authority should first determine whether the plan / project is likely to have a significant effect on a designated site. In the event a likely significant effect is identified, the competent authority is then required to determine whether the plan / project will affect the integrity of the European site.

- 2.5 Article 6(4) provides a mechanism by which despite a negative assessment of a plan or project for the site, a plan or a project can proceed with appropriate compensation in cases where there is no satisfactory alternative and reason of overriding public interest can be demonstrated.

#### General Species Protection

- 2.6 Species afforded protection under the Habitat Regulations and of principal relevance to this PoE are bats. Species listed in Annex IV(a) of the Habitat Regulations, their resting places and breeding sites are also afforded full protection under both the Wildlife & Countryside Act (WCA) 1981 (*as amended*). When these species, or the resting places or breeding sites of these species, are affected by proposals or works, the legislative mechanism by which licenses are granted is the Habitat Regulations.

#### Protection for Foraging Areas & Commuting Routes

- 2.7 Foraging areas and commuting routes for bats are not afforded strict protection by the Habitat Regulations or the Wildlife & Countryside Act (WCA) 1981 (*as amended*). Commuting routes are only afforded strict protection under the Habitat Regulations when the removal of such routes could lead to the 'deterioration' of a roost site. (Guidance on such protection is provided in 'Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC. Feb 2007').

#### **The Wildlife & Countryside Act 1981 (WCA) (*as amended*) (E+W)**

- 2.8 Species afforded protection under this legislation and relevant to this PoE include common species of reptiles, bats, and birds.
- 2.9 Section 9 of the WCA 1981 (*as amended*) makes it an offence to (subject to exceptions) intentionally or recklessly kill, injure or take wild animals listed on Schedule 5 of the Act. For some species such as all bats and some others, the protection extends to interference with places used for shelter or protection, or disturbing animals occupying or obstructing access to such places.
- 2.10 Common species of reptiles are afforded protection under Sections 9(1) and 9(5) of Schedule 5 of the WCA 1981 (*as amended*). This legislation protects these animals from:
- intentional killing and injury; and
  - selling, offering for sale, possessing, or transporting for the purpose of sale or publishing.
- 2.11 Part 1 of this Act also provides protection for all species of wild birds during the breeding season. Under the Act all birds, their nests and eggs are protected by law and it is an offence, with certain exceptions, to intentionally:
- Kill, injure, or take any wild bird.
  - Take, damage, or destroy the nest of any wild bird while in use or being built; and
  - Take or destroy the egg of any wild bird.
- 2.12 Further protection is provided for a list species under Schedule 1 of the Act, whereby it is an offence if any person intentionally or recklessly:
- disturbs any wild bird included in Schedule 1 while it is building a nest or is in, on or near a nest containing eggs or young; or

- disturbs dependent young of such a bird.

2.13 Schedule 1 birds are also further protected from killing or injury where exceptions occur for certain non-schedule 1 species, and under certain special penalties.

### **Protection of Badger's Act 1992**

2.14 Badgers are protected under the Protection of Badgers Act 1992. This act is based on the need to protect badgers from persecution by baiting and deliberate harm or injury. The act makes it an offence to:

- Wilfully kill, injure, take, possess or cruelly ill-treat a badger, or attempt to do so.
- To intentionally or recklessly interfere with a sett. Sett interference includes disturbing badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access routes.

2.15 A sett is defined as:

“Any structure or place that displays signs indicating current use by a badger”.

2.16 Work that disturbs badgers whilst occupying a sett is illegal without a licence, badgers may be disturbed by work near the sett even if there is no direct interference or damage to the sett. Natural England issues guidelines on the types of activity that it considers should be licensed within given distances of sett entrances as follows:

- Using heavy machinery (generally tracked vehicles) within 30m of any entrance to an active sett;
- Using lighter machinery (generally wheeled vehicles), particularly for any digging operation within 20m; and
- Light work such as scrub clearance or hand digging within 10m.

2.17 However, recent guidance from Natural England recommends that the potential for such disturbance might not be as great as originally assumed due to the relatively high tolerance levels of badgers. Whether disturbance will be caused should take into account the sett characteristics, current usage and proposed extent of works with the need for a licence being assessed on a site-to-site basis

2.18 Licences only allow works to be carried out between July and November inclusive.

### **Natural Environment and Rural Communities (NERC) Act 2006**

2.19 Section 40 (1) of the NERC Act 2006 requires public authorities when exercising their functions to 'have regard, so far as is consistent with the proper exercise of those functions to the purpose of conserving biodiversity'. The latter is defined as including restoring or enhancing a population or habitat (Section 40 (3)).

2.20 Section 41 (S41) of the NERC Act 2006 requires the Secretary of State (SoS) to publish a list of the living organisms and types of habitat which in the Secretary of State's opinion are of principal importance for the purpose of conserving biodiversity. Before publication, the SoS must consult Natural England.

2.21 Once published and without prejudice to Section 40(1), the SoS must:

- a. Take such steps as appear to the Secretary of State to be reasonably practicable to further conservation including living organisms and habitats included in any list published under this section; or
- b. Promote the taking by other of such steps.

### **Draft Environment Bill December 2020**

- 2.22 The Draft Environment Bill provides the legal mechanism by which the 25 Year Environment Plan can be enforced. This bill is yet to be enacted but the Queen's Speech indicated the Bill will be introduced in the upcoming parliamentary year.
- 2.23 Part 6 of the legislation directly relates to Nature and Biodiversity and commits to providing a 'net gain' to biodiversity as a condition of planning permission. Schedule 15(4)(3) of the draft Bill indicates the required 'net gain' for planning permission will be 10%. The content of the Bill, including the latter figure may change, as it passes through the various parliamentary stages.

### **National Policy**

#### **National Planning Policy Framework (NPPF) (Feb 2019)**

- 2.24 The National Planning Policy Framework was updated in February 2019 to provide guidance for planning authorities and other decision makers on achieving sustainable development. Paragraphs 170 - 177 are relevant to biodiversity and a summary of the relevant elements is provided below.
- 2.25 Paragraph 170 recommends the planning system should contribute to and enhance the natural and local environment. Bullet points (a) and (d) (below) are relevant to this evidence:
- protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan),
  - minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 2.26 When determining planning applications Paragraph 175 recommends that local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:
- if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused,
  - development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest,
  - development resulting in the loss or deterioration of irreplaceable habitats (such as Ancient Woodland and ancient or Veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and

- development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

2.27 Paragraph 177 states:

*'The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site'.*

### **National Planning Practice Guidance<sup>1</sup>**

2.28 The section of the NPPG relating to Guidance for the natural environment (updated 21 July 2019) explains key issues in implementing policy to protect biodiversity, including local requirements.

2.29 Paragraph 009 confirms that when exercising their functions, public authorities have a duty to have 'regard' to the purpose of conserving biodiversity as outlined in Section 40 of the Natural Environment & Rural Communities Act 2006. The purpose of this duty is to embed consideration for biodiversity into the decision-making process with the aim of making significant contributions to achieving the government commitments in the 25-year Environment Plan.

2.30 Paragraph 013 confirms local ecological networks are important for nature conservation, making an important contribution in developing a Nature Recovery Network. The expectation of National planning policy is that local ecological networks are identified and mapped, through the plan making process and policies applied that secure protection from harm or loss and enhance them and their connection to wider ecological networks.

2.31 Recommendations for considering biodiversity when preparing planning applications are outlined at Paragraph 018. This confirms information on biodiversity needs to be considered when designing a development, and ecological surveys are required in advance of a planning application if the proposals could have a significant effect on biodiversity and existing information is lacking or inadequate. This guidance recommends that assessments need to be proportionate to the nature and scale of the proposals and the likely effects.

2.32 Paragraph 019 confirms the 'mitigation hierarchy' outlined at Paragraph 175 of the NPPF should be applied. Paragraph 022 encourages net gain for biodiversity. through planning policies and decisions and Paragraph 025 advocates the use of a 'biodiversity metric' to demonstrate whether a net gain to biodiversity can be achieved. In this case, net gains will be achievable on the Site.

### **Adopted Regional & Local Policy**

2.33 The following section considers adopted local planning policies relevant to ecology and nature conservation. The weight which can be attributed to these policies is not considered here. Mr Brown deals with matters of planning policy.

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<sup>1</sup> Biodiversity, geodiversity and ecosystems. (Source: <https://www.gov.uk/guidance/natural-environment#biodiversity-geodiversity-and-ecosystems>. Accessed on: 28.03.21)

## **Fareham Borough Council Local Plan**

- 2.34 Fareham Borough Council Local Plan Part 2: Development Sites & Policies (2015), provides policy that consider nature conservation.

### **Policy DSP13: Nature Conservation**

- 2.35 Development may be permitted where it can be demonstrated that;
- i) designated sites and sites of nature conservation value are protected and where appropriate enhanced;
  - ii) protected, priority and target species populations and their associated habitats, breeding areas, foraging areas are protected and, where appropriate, enhanced;
  - iii) where appropriate, opportunities to provide a net gain in biodiversity have been explored and biodiversity enhancements incorporated; and
  - iv) The proposal would not prejudice or result in the fragmentation of the biodiversity network.

Proposals resulting in detrimental impacts to the above shall only be granted where the planning authority is satisfied that;

- i) Impacts are outweighed by the need for, and benefits of, the development; and
- ii) Adverse impacts can be minimised, and provision is made for mitigation and, where necessary, compensation of those impacts.

### **Policy DSP40: Housing allocation**

- 2.36 Where it can be demonstrated that the Council does not have a five year supply of land for housing against the requirements of the Core Strategy (excluding Welborne) additional housing sites, outside the urban area boundary, may be permitted where they meet all of the following criteria (Reason v. is relevant to ecology):
- i. The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;
  - 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 to minimise any adverse impact on the Countryside and, if relevant, the Strategic Gaps
  - iv. It can be demonstrated that the proposal is deliverable in the short term; and
  - v. The proposal would not have any unacceptable environmental, amenity or traffic implications.
- 2.37 For the purposes of my assessment, only part v. of DSP40 is relevant.

### **Policy CS4 Green Infrastructure, Biodiversity and Geological Conservation**

Habitats important to the biodiversity of the Borough, including Sites of Special Scientific Interest, Sites of Importance for Nature Conservation, areas of woodland, the coast and trees will be protected in accordance with the following hierarchy of nature conservation designations:

- (i) International - Special Protection Areas (SPA), Special Areas of Conservation (SAC) and RAMSAR;

- (ii) National - Sites of Special Scientific Interest (SSSI) and National Nature Reserves;
- (iii) Local - Sites of Importance for Nature Conservation (SINC), Local Nature Reserves (LNR), other Ancient Woodland not identified in (ii) above;
- (iv) Sites of Nature Conservation Value. Where possible, particularly within the identified Biodiversity Opportunity Areas, sites will be enhanced to contribute to the objectives and targets set out in UK, Regional, County and Local Biodiversity Action Plans. Green Infrastructure networks, which buffer and link established sites, whilst also enabling species to disperse and adapt to climate change will be maintained and enhanced.

Networks of accessible multi-functional Green Infrastructure will be planned around existing green spaces in urban, urban fringe and rural areas and will be appropriate to the extent and distribution of the existing and proposed population.

Development Proposals will be permitted where Green Infrastructure provision in accordance with the Green Infrastructure Strategy has been integrated within the development where this is appropriate. Development proposals will provide for appropriate access to greenspace for informal recreation to avoid adverse impacts from recreation and other impacts on European and Ramsar sites and on nationally and locally important sites.

Green Infrastructure will be created and safeguarded through:

- Investing in appropriate management, enhancement and restoration, and the creation of new resources including parks, woodland and trees, and wildlife habitats;
- Not permitting development that compromises its integrity and therefore that of the overall green infrastructure framework

In order to prevent adverse effects upon sensitive European sites in and around the Borough, the Council will work with other local authorities (including the Partnership for Urban South Hampshire) to develop and implement a strategic approach to protecting European sites from recreational pressure and development. This will include a suite of mitigation measures, with adequate provision of alternative recreational space for access management measures within and around the European sites and mitigation for impacts on air quality due to road traffic, supported by developer contributions where appropriate. Development likely to have an individual or cumulative adverse impact will not be permitted unless the necessary mitigation measures have been secured.

The Council will, through its Annual Monitoring Report, Local Air Quality Management and ongoing visitor surveys and related activities, scrutinise the effectiveness of the joint strategic approach to avoidance and mitigation of effects on European sites. It will adjust the rate, scale and/or distribution of housing or employment development across the Borough to respond to the findings of new evidence where appropriate, including the Solent Disturbance and Mitigation Project in order to preserve the integrity of European sites.

### **3.0 REASON FOR REFUSAL AND IDENTIFICATION OF ISSUES**

#### **Decision Notice**

- 3.1 The initial outline application was refused by decision dated 21st September 2020. This PoE is only addressing Reasons for Refusal (RfR) d) in relation to the *on-Site* ecology, which was as follows:

*“d) The proposal fails to provide sufficient information to demonstrate that protected and priority species would be protected and enhanced.”*

#### **Committee Report**

- 3.2 Fareham Borough Council’s internal representations within the Committee Report section 7, states the following in relation to the on-Site ecology:

*“7.10. Concerns raised in relation to.... the lack of detail within the submitted Ecological Impact Assessment (EclA), particularly in relation to the delivery of the reptile receptor site, operational phase impacts on badgers, construction phase noise impacts and cumulative impacts.”*

- 3.3 In section 8 of the Committee Report, a list of key material planning considerations which needs to be assessed to determine the suitability of the development proposal, is provided. The consideration in relation to on-Site ecology is provided under e) Other Matters; and is as follows:

*“8.41. The Council’s Ecologist has raised concerns regarding the lack of information provided by the applicant, including updated information in light of changes to the proposed scheme, in relation to the delivery of the reptile receptor site, impacts on badgers, construction noise and cumulative impacts. In the absence of such information the proposal fails to demonstrate that protected and priority species would be protected and enhanced which is contrary to the aims of Policy DSP13.”*

- 3.4 Objections from local residents are summarised in Section 6.1 of the Committee Report. In relation to on-Site ecology, it states:

*“Gathering of ecological evidence does not fully assess the ecosystems.”*

#### **Issues Summary**

- 3.5 The RfR is one of insufficient information. It is specifically in relation to *concerns regarding the lack of information that demonstrates to the Council that the on-Site protected and priority species would be protected and enhanced*. In section 8.41, the officer highlights concern regarding the *lack of information provided by the applicant, including updated information in light of changes to the proposed scheme*, and the officer states the lack of information is considered *contrary to the aims of Policy DSP13*. Specifics are highlighted in section 8.41 in relation to the reptile receptor site, operational phase impacts on badgers, noise and cumulative impacts, but this PoE relates to all the on-Site ecology as well.

- 3.6 This PoE will categorically show how the proposed development has the capacity for all the on-Site ecology concerns to be fully addressed at Reserved Matters, and show that the information, including the additional Appeal information provided since the decision, is sufficient for refusal d), and the officer’s objection, to be removed and the Appeal to be allowed.

## **4.0 ECOLOGICAL INFORMATION**

4.1 The following section outlines the history and nature of the ecological information gathered for the outline application and the Appeal, and the assessment documents that have been provided to date.

### **Outline Application Submission 2018**

4.2 The on-Site baseline ecological information was obtained over an extended survey period between 2017 - 2021. The survey work was conducted by Ecosupport and was submitted to the LPA for the outline application in September 2018. The documents submitted were:

- Ecological Impact Assessment (EclA) (dated: May 2018)
- Reptile Survey & Mitigation Strategy (dated: May 2018)
- Proposal for Bird Conservation Area (dated: May 2018)

4.3 The May 2018 ecology documents above were based on the following ecological Surveys and data gathering exercises conducted by Ecosupport:

- Phase 1 habitat survey, bats in trees ground assessment and badger survey May 2017 and updated in May 2018.
- Monthly bat activity surveys April to September 2017.
- Reptile surveys April to May 2017.
- Dormouse surveys May to October 2017.
- SPA bird surveys desk study 2017.
- Desk study and Hampshire Biodiversity Information Centre 2017.

### **Outline Application Supplementary Information Submission 2020**

4.4 Two additional documents were submitted in August 2020 produced by Lyndsay Carrington Ecological Services. These were:

- Bird Mitigation Reserve Proposals - August 2020 (received 6th August 2020)
- Revised Nutrient Budget (received 6th August 2020)

4.5 The two above documents are not directly relevant for the on-Site ecology RfR d), but do detail the location and proposed management of a 4.2 ha Bird Mitigation Area in the south of the Application Site, which is of relevance here.

### **Information Submitted for the Appeal June 2021**

4.6 To address the concern for a lack of information for Protected and Priority species raised in the Decision Notice and Committee Report, and to ensure the on-Site ecology is assessed against the updated layout submitted after Ecosupport's 2018 EclA, FPCR have submitted for this Appeal a full detailed re-assessment of the on-Site ecology, based on the previous and new information. The documents submitted are as follows:

- Environmental Statement Update (ES) Chapter 10 June 2021: Ecology and Biodiversity – full Ecological Impact Assessment by FPCR.
- ES Update Chapter 10 Technical Appendices as follows:
  - F1: FPCR Ecology Survey Update
  - F2: 2018 Ecosupport Surveys:
  - F3: Phase 1 Habitat Plan
  - F4: Biodiversity Mitigation and Enhancement Plan
  - F5: 2020 Brent Goose Mitigation Plan
  - F6: Biodiversity Net Gain Assessment
  - F7: Shadow HRA

4.7 To inform the ES Update Chapter 10 and detailed in Appendix F1, surveys were updated by FPCR to reassess the baseline conditions. This comprised of an updated phase 1 habitat survey, bats in tree ground assessment and badger survey in November 2020 and March 2021. Repeat surveys are ongoing in 2021 to ensure the information is up to date for the potential future Reserved Matters application. The information gathered up to the time of the appeal submission, was submitted with the ES to inform the baseline update; including for bat activity surveys (May), reptiles (two visits) and dormice (May visit).

4.8 Two further documents were produced by FPCR and submitted to the Appeal to provide a more detailed outline for the ecological mitigation proposed with the ES Update Chapter 10.

- 1) Framework Landscape & Ecological Specification & Management Plan (fLEMP) (FPCR, June 2021). This is an indicative document to inform a future Landscape and Ecological Management Plan (LEMP) at Reserved matters, that shows the suitable ecological objectives, habitat creation and ecological enhancements that would be required to a) achieve a 10% Biodiversity Net Gain and b) protect and enhance the protected and priority species during the operational phase.
- 2) Framework Construction Traffic Environmental Management Plan (fCTEMP) (Stewart Michael Associates, June 2021). This is an indicative document to inform a future Construction and Ecological management Plan (CEMP) at Reserved matters. It includes in Appendix B a Badger and Reptile indicative Construction Mitigation Plan produced by FPCR to highlight the primary mitigation requirements to protect these species, and input from FPCR was provided in 2.18 to 2.29 for the ecology construction mitigation requirements across all species and habitats.

## 5.0 ECOLOGICAL BASELINE

- 5.1 The following is a summary of the ecological baseline on-Site, as determined by the surveys and supporting documents described in Section 4. It is based on the most up to date baseline as presented in the ES Update Chapter 10.

### Habitats

- 5.2 No significant ecologically important nor sensitive habitats were recorded on the Site. The Site was a typical example of urban edge arable farmland. The habitats on the Site consisted of arable, improved grassland margins, small areas of tall ruderal, some boundary scattered scrub, three hedgerows and six mature ash trees on the south-eastern boundary. There was no notable change in the habitats or land use practice on the Site between the 2017 and 2021 surveys. The habitats present have limited ecological value in isolation; however, some provide habitat for protected species and all hedgerows are NERC S41 priority habitat. Overall, the habitats on the Site are **sub-local to local value**.

### Badgers

- 5.3 A four-entrance sett was recorded on the Site in 2018 in the southeast corner, on the southern boundary. A known main sett is present on the neighbouring site to the east, and it is considered most likely the on-Site sett is an annex to that main. Likely badger runs were recorded along the eastern and western boundaries. Badgers are common and widespread and have a low conservation status but have special protection due to persecution. Owing only to their legal protection are they are considered of **local importance**.

### Bats

- 5.4 During the 2017 activity surveys, at least six species of bat were recorded. The species were all common and or widespread across the south of England and neither their presence, nor the diversity of assemblage, is significant for Hampshire. Activity levels across all species was not significant. As is normally expected, common pipistrelle was dominant, followed by soprano pipistrelle. *Myotis Spp.*, noctule, brown long-eared and serotine were also present. Across all species, the overall level of activity was low and not significant.
- 5.5 In May 2021, there was a single deployment for five nights of two static detectors and one walked transect survey to re-assess baseline conditions. The surveys recorded the same five species as the previous surveys and activity levels for these were comparable with the 2017 survey. Only sixteen contacts of common pipistrelle were recorded on the walked transect.
- 5.6 Five single registrations of barbastelle (NERC Section 41) on the automated survey were new. They were all recorded on one of the five nights within an hour period approximately 2.5 hours after sunset. This was probably a single bat utilising the Site boundary features for foraging, and the evidence does to indicate a nearby roost given how late after its emergence time it was recorded (typically 25 to 40 mins after sunset). The low level of activity recorded from this species over the May survey period suggests that use of the Site is occasional and that the Site is not important for this species.
- 5.7 Barbastelle are regarded as one of the county's rarer species and are listed on Annex II of the Habitats Directive, though there are no SACs designated for this species in the area. They have a

restricted distribution in the UK but are locally common in southern, south-eastern and south-western England, including Hampshire. This species mainly roosts in woodland with mature trees, and such sites are present within 5km of the Site. Barbastelle travel large distances along linear features between roost sites and foraging areas; however, they typically have a core sustenance zone of up to 6km from their roosting area. They are commonly recorded with modern bat detectors on farmland in low number, and their presence alone is not significant.

- 5.8 The overall assemblage of species and activity levels of bats recorded suggest that the Site is of **local importance**.

#### Bat Roosts

- 5.9 A row of trees in the southwest corner of the Site provides the only potential features that bats may roost in. A ground assessment of these trees in 2018 recorded all to have either low or negligible potential to support roosting bats and no roosting bats were recorded. This was still true in November 2020 during the re-visit. Bats and their roosts are protected under the Habitats Regulations and WCA 1981. The Site is of **sub-local importance** for roosting bats.

#### Breeding birds

- 5.10 Targeted breeding bird surveys have not been undertaken at the Site. Suitable bird nesting habitat in the form of hedgerows and mature trees are present around the Site's boundary. No vegetation is to be lost. During spring visits for other protected species surveys in 2021, no ground nesting bird species, such as skylark *Alauda arvensis* were recorded. The Site is of **local importance** for breeding birds.

#### Hazel Dormice

- 5.11 No dormice or signs of dormice were recorded during 2017 and no dormice have been recorded during a single May update dormouse survey in 2021. There are records of dormice within 2 km of the Site, however, there is poor connectivity between the Site and the habitats that dormice are present. No further consideration is given to this species.

#### Reptiles

- 5.12 Seven reptile surveys were undertaken in 2017. Slow worm *Anguis fragilis* were present on each occasion, with a peak count of 31. Most records were from the northern boundary, which is a south facing strip of grassland that backs onto the gardens of houses along Romsey Avenue. This represents a "good" population of slow worm. Slow worm is a NERC Section 41 Priority Species that is widespread and locally common, although declining throughout its range. They are common throughout Hampshire. The Site is of **local importance**.

## **6.0 ECOLOGICAL INFLUENCES, DESIGN AND PROPOSED MITIGATION**

- 6.1 All habitats of value to protected species are to be retained and enhanced within the proposals and only small areas of easily compensated bramble scrub and improved grassland will be lost. Only the low value arable habitat will be permanently lost to facilitate almost all of the built environment. The proposals retain the ecologically important features, and where potential impacts have been identified, the Mitigation Hierarchy has been applied (avoid – minimise - compensate).
- 6.2 Overall, the proposed green infrastructure will provide areas approximately 7.7ha of terrestrial and wetland habitats, including 442m of native species rich hedgerow, which will benefit a wide range of protected species including amphibians, badgers, bats, birds, invertebrates, small mammals, and reptiles.

### Bird Mitigation Area

- 6.3 A significant ecological influence on the design of the Site has been the proposed 4.2 ha Bird Mitigation Area in the south of the Site. This area will be managed predominantly for brent geese, but will also contain sensitively designed SUDs and surrounding grassland and enhanced grassland field margins. This area is to be fenced to prevent public access, creating a significant undisturbed ecology area for a residential planning application of this size. This area will be dark and form a key part of the protection and enhancement strategy for the “good” population of reptiles present on the Site. It will allow for the retention, and provide a high level of protection for, the four-entrance badger sett badger located in the south-east of the Bird Mitigation Area. The area will also provide for light sensitive bat species including barbastelle, birds, and other general species/communities.

### Western Public Open Space

- 6.4 In the west of the Site, along the length of the western boundary, is an area of green Public Open Space (POS). This area will form a wide corridor along the western boundary linking the northern boundary to the Bird Mitigation Area. This area will function as a dual-space for people and biodiversity, where species-rich grassland habitats created along the length will maintain and enhance the existing habitat network which is currently restricted only to narrow field margins along an arable field. This area will form part of the protection and enhancement strategy for reptiles, badger, bats, birds and other species by providing a strong corridor on the edge of the Site for commuting and foraging. It is of sufficient width to ensure the western boundary hedge can remain dark enough for light sensitive bats.

### Boundaries and Connectivity

- 6.5 The proposals will retain the field margins with 5m to 10m buffer along the northern, southern, and eastern boundaries, and there is a commitment to enhancing those hedges that will not reduce sight lines for water birds in the mitigation area. This will ensure a level of connectivity is maintained around the whole Site, that also compliments the green space in the neighbouring development to the east. This connectivity will form part of the protection and enhancement strategy for reptiles which were present on the northern boundary, and commuting and foraging resources for badger, bats, birds and other general species.

### Construction Mitigation - CEMP

- 6.6 To ensure that the protected and priority species are protected from unlawful killing, injury or disturbance, a Construction and Environmental Management Plan (CEMP) has been proposed in the ES Update Chapter 10, and its implementation at Reserved Matters can be secured by condition. It includes the requirement to appoint an Ecological Clerk of Works (ECoW) to oversee the Reserved Matters Application and construction.
- 6.7 The fCTEMP provides a framework for the ecological considerations to be included in the CEMP. It details the standard practices in terms of protecting retained habitats with protective fencing, the implementation of restricted access to Ecologically Sensitive Zones (ESZ) and standard pollution prevention and control measures etc.
- 6.8 In relation to protected species, the fCTEMP outlines the Protected Species Method Statements (PSMS) that will be required to ensure vegetation removal and site clearance is lawful. The PSMS' includes nesting birds, reptiles and badgers owing to their confirmed presence, and precautionary mitigation for bats in trees and other species is outlined.
- 6.9 Appendix B Figure 1 of the fCTEMP is an indicative plan highlighting the most important measures required to protect reptiles and badger and address the concern for a lack of information in this regard in the Committee Report. These measures are:
- 1) Reptiles: A reptile exclusion fence will be installed around the perimeter of the construction site. This will ensure there is grassland habitat maintained during construction along the northern, eastern, and western boundaries that link to the mitigation area in the south. The habitat on the construction area will be managed as it is at present up to construction, or if not possible/feasible, it shall be kept short with monthly cutting. If the updated walkover survey shows the Site has been allowed to become overgrown, other measures may need to be implemented which might include trapping.  
  
Any habitat clearance or management required within the ESZ outside the reptile fence (e.g., SUDs creation), where suitable grassland/hedgerows/scrub habitat is present, shall only be conducted during active reptile season (April to October), when temperatures are above 10 oC and under supervision by the ECoW following standard two stage cutting passive displacement methods.
  - 2) Badgers: The badger sett in the eastern east corner shall be clearly marked with a 30m exclusion zone. It is well outside the constitution area. Any activities required within 30m of this sett, or any other setts subsequently discovered on-Site, will follow an agreed Method Statement produced by the ECoW and agreed by a licenced badger person. Any works deemed likely to disturb a badger or disturb or destroy an active badger sett, will be conducted under the standard licencing procedures. Such works may require a period of 30-day monitoring to establish if a sett is active, and if active, may only be possible between July and November.
- 6.10 It is anticipated that the retention of field margins and the buffering of the on-Site boundary hedges, and the southern Bird Mitigation Area and western POS, will make the detailed CEMP and these measures straightforward to design and implement.

### Operational Mitigation and Management

- 6.11 All the habitats retained or created within the Site will be subject to long-term management, and it is proposed that this will be secured through condition with the pre-commencement requirement for a Landscape Environmental Management Plan (LEMP) and detailed landscape design. The fLEMP provides a framework for the LEMP. Included is the creation of specie-rich grassland habitats along all field margins and within the western POS, sensitively designed SuDs features, a new scrape and other habitats within the Bird Mitigation Area, and the planting of new native hedges and trees.
- 6.12 Enhancements to minimise potential effects and provide betterment proposed include:
- One swift brick per dwelling;
  - 50 house sparrow terraces;
  - One integrated bat box per dwelling (225);
  - One integrated bee brick per dwelling;
  - Three reptile hibernacula linked to existing habitat;
  - Creation and management of approximately 1.1ha of semi-improved grassland in Public Open Space (POS) area for reptiles;
  - Hedgehog gaps in all fences and walls and 20 hedgehog houses;
  - Planting of 442m of new native species rich hedgerow on northern boundary of bird reserve;
  - The creation of three SuDs ponds, including one permanently wet feature;
  - A Kingfisher and sand martin bank in the bird reserve area next to the new wet pond, and;
  - Approximately 0.55 ha of species rich native damp grassland around the pond and SuDs area.

These proposed mitigation and enhancement measures will create a measurable net gain for habitats in terms of Biodiversity Net Gain, and a predicted net gain for protected and priority species also due to the low biodiversity value of the baseline. These are detailed in Sections 7 and 8 below.

## 7.0 ASSESSMENT OF POTENTIAL EFFECTS

- 7.1 To assist the Inspector, the following provides a summary of the potential ecological effects. This assessment applies to the masterplan submitted to the appeal and mitigation and enhancements proposed in ES Update Chapter 10 Appendix F (Biodiversity Mitigation and Enhancement Plan), fCTEMP and fLEMP, and as outlined in Section 6.

### Habitats

- 7.2 The habitats within the Site have been assessed as being of sub-local to local importance. The main habitat lost will be the arable land, which is the lowest value habitat on-Site. The marginal habitats formed by hedges, trees and grassland margins is to be retained and protected.
- 7.3 The 7.3 ha of POS on the Site provides a significant opportunity for enhancement. It is predicted that following the establishment of the proposed habitat enhancements and the application of long-term management, **long-term moderate positive effects** to biodiversity are achievable. This positive assessment has been quantified through use of the DEFRA metric Version 2.0 (see section 8 below).

### Badgers

- 7.4 The on-Site badger sett is located in the southeast corner of the Site and fully within the Bird Mitigation Area. The sett is some 170m from the developable and no construction activities are proposed nearby. A 30m fenced exclusion zone during construction is proposed (fCEMP Appendix B Figure 1) around the sett, and standard precautionary mitigation is straightforward to implement within a CEMP at RM. There will be no significant impact on badgers during construction, and a low risk of an offence being committed under the Badger Act.
- 7.5 During operation, badgers will continue to have unimpeded accesses to their main sett retained in the new development to the east of the Site, and to the south and west. The creation of habitat, specifically for brent geese within the Bird Mitigation Area, can also be undertaken with no impacts on the existing badger sett. Normal farming operations have not changed the status of this sett and therefore creation and management of improved grassland is unlikely to have any additional impacts. The potential effects have been assessed as **negligible**, and the general habitat enhancements in the south and west of the Site is predicted to result in a potential **long-term moderate positive** effect at the local level.

### Breeding Birds

- 7.6 The breeding bird assemblage on Site is of local value and nesting habitat was limited. The nesting birds PSMS to be detailed in the CEMP at RM will prevent the potential unlawful destruction of active nests. The mitigation and enhancement proposals including the bird box provision, and the creation of residential gardens, will increase the available nesting and foraging resource for birds on the Site. A **significant long-term major positive effect** at the local level is predicted

## Bats

- 7.7 The bat assemblage is of local value. The most notable feature of the assemblage is very low numbers of barbastelle, a light sensitive species. No bat roosts are present on the Site, though retained trees on the southern boundary, retained within the Bird Mitigation Area, are of low potential and precautionary mitigation is proposed for these trees within the CEMP at RM.
- 7.8 All bats recorded were utilising boundary features, including hedgerows and trees, which will be retained and enhanced. Access for commuting bats will be maintained along all boundaries and a low level-lighting scheme can be conditioned at RM. The southern and western boundaries, given their large open space buffers, will be able to achieve very low light levels for barbastelle (0.5 lux or less).
- 7.9 The mitigation and enhancement proposals, which includes 225 integrated bat boxes in houses, will significantly increase foraging opportunities on the Site for bats, particularly in the south and west green space areas. The potential effects to the local bat population have been assessed as **long-term minor positive** at the local level.

## Reptiles

- 7.10 A good population of slow worm is present within boundary habitats of the Site, with the main population found along the northern boundary in 0.8ha of improved grassland, adjacent to existing gardens of Romsey Avenue properties. 0.7ha of this grassland will be retained and integrated into the new Site proposals, however during the construction phase, areas totalling less than 0.01 hectares will be lost during works for landscape planting along the northern boundary.
- 7.11 The mitigation proposed in the fCTEMP will fully exclude reptiles from the developable area during construction using reptile fencing. All the area outside the fence will become an Ecologically Sensitive Area, and there will be free movement for reptiles along all boundaries. Trapping will not be necessary, providing the current arable habitat on the Site remains unsuitable. If trapping is required, the receptor area will be the Ecologically Sensitive Zone. As some works within the Ecologically Sensitive Zone will be required such as SUDs creation and laying paths, the CEMP will include a Method Statement for supervision of works in these areas. This mitigation will ensure the reptiles are protected during construction and prevent unlawful killing and injury. When the development is completed, the reptile fence can be removed.
- 7.12 A significant increase in reptile habitat is proposed, and will be implemented through the LEMP and detailed landscape design at RM. There will be new areas of suitable semi-improved grassland along the field margins that will connect the existing reptile habitat on the northern boundary permanently to the western POS and the Bird Mitigation Area. Reptile hibernacula will also be provided.
- 7.13 Further provisions including new hedgerow planting and grassland habitats in the POS, will further enhance the Site for slow worm. Overall, these provisions will result in a **long-term moderate positive** effect for reptiles at the local level.

## **8.0 BIODIVERSITY NET GAIN (BNG)**

- 8.1 Fareham Local Plan Policy DSP13: Nature Conservation, where relevant to Biodiversity Net Gain (BNG) states that;
- “Development may be permitted where it can be demonstrated that;*
- ii) Protected and priority species populations and their associated habitats, breeding areas, foraging areas are protected and, where appropriate, enhanced;*
- iii) Where appropriate, opportunities to provide a net gain in biodiversity have been explored and biodiversity enhancements incorporated; and*
- iv) The proposal would not be prejudice or result in the fragmentation of the biodiversity network.”*
- 8.2 Paragraph 175 of the NPPF states that development should aim to provide measurable net gain to biodiversity. It does not suggest a level of net gain that developments should provide.
- 8.3 Once the Environment Bill gains royal assent, there is likely to be a legal requirement for most development projects to provide a minimum level of net gain for biodiversity (currently proposed as 10%) measured using the DEFRA metric. The level of net gain is yet to be confirmed.
- 8.4 The DEFRA metric is a spreadsheet which calculates the baseline value of habitats within sites, the effects of development proposals without mitigation and finally the overall effects of proposals following the implementation of mitigation. The final effects of proposals are calculated on habitat types lost and provided, connectivity, area location and complexity. The current DEFRA metric (Version 2) is still in the testing phase and it is expected that Version 3 will be released during 2021 in advance of the Environment Bill.
- 8.5 The proposals have been designed to provide a net gain to biodiversity and the revised proposal submitted to this appeal does achieve a net gain. The scheme would comply with the basic ‘net gain’ requirements outlined at Para 175 of the NPPF.
- 8.6 For the purposes of this assessment the fLEMP shows that a small change to planting, mostly from the creation of a 7m species-rich grassland margin around the Bird Mitigation Area northern and western edges, will enable a habitat score of 10% biodiversity net gain to be reached (shown in appendix 3). The ES Chapter 10 takes a precautionary approach for providing net gain and shows that post intervention there will be a gain in both habitats (5.95%) and hedgerows (132.56%). 3.7ha of the Site set aside for brent goose habitat represents a large loss in potential units as it must be managed as modified grassland, a low distinctiveness habitat, which scores poorly for biodiversity gain within the metric. Nevertheless, this area will provide an important habitat for the brent geese. With the additional enhanced grassland strip proposed in the fLEMP, 10% net gain for the proposals will be achieved, without any detriment to the brent goose habitat.
- 8.7 The relatively low gain in habitat units must also be considered alongside the very large net gain in hedgerow units. While these figures are not directly comparable there is clearly a very significant net gain for hedgerows that will improve the biodiversity of the site overall.
- 8.8 These gains demonstrate that significant benefits for biodiversity would be provided by the proposals, when compared to the baseline condition of the Site, in line with the current requirements of the NPPF.

## **9.0 LEGAL AND POLICY COMPLIANCE**

- 9.1 The Habitats Regulations (Designated Sites): not dealt with in this PoE with regards to the Solent SPA sites and SPA birds. There are no nearby Natura 2000 sites that qualify for the species recorded on the Site. The on-Site ecology is fully compliant with the Habitats Regulations with regards to designated sites.
- 9.2 The Habitats Regulations (General Species Protection): all bat species are listed in Annex IV(a) of the Habitat Regulations and are European Protected Species. There were no roosts, resting places or breeding sites recorded on the Site. No actual or potential commuting routes that could lead to the 'deterioration' of a roost site are to be significantly affected by the proposals. The on-Site ecology is fully compliant with the Habitats Regulations with regards to general protected species.
- 9.3 The WCA 1981 (as amended): commuting and foraging bats were recorded on the Site. All bats are fully protected under Section 9 of the WCA 1981 (as amended) which makes it an offence to (subject to exceptions) intentionally or recklessly kill, injure or take bats or interfere with places used for shelter or protection, or disturb animals occupying, or obstructing access to, such places. There were no roosts, resting places or breeding sites recorded on the Site.
- 9.4 The WCA 1981 (as amended): Common reptile species are present on the Site. They have limited protected under Sections 9(1) and 9(5) of Schedule 5 of the WCA 1981 (as amended). The intentional killing and injury can be prevented with the mitigation proposed. The on-Site ecology is fully compliant.
- 9.5 The WCA 1981 (as amended): Nesting birds are present or potentially present on the Site and protected under part 1 of the WCA 1981 (as amended). The intentional killing of birds, and destruction of nests and eggs, can be prevented with the mitigation proposed. No Schedule 1 birds breed on the Site. The on-Site ecology is fully compliant.
- 9.6 Protection of Badger's Act 1992: A four entrance badger sett is present on the Site. The mitigation proposed ensures badgers are not wilfully killed, injured, taken, possessed or cruelly ill-treated, and that their setts are protected from intentional or reckless interference. The on-Site ecology is fully compliant with this Act.
- 9.7 (NERC) Act 2006: there are no direct legal compliance requirements with this Act for developers, as the requirements in relation to the Act are directed at Public Authorities.
- 9.8 Draft Environment Bill December 2020: compliance in terms of 10% net gain is demonstrated.

### National Policy

- 9.9 NPPF (paragraph 170): with regards to "*minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.*" Compliance through 10% BNG demonstrated, and the network is enhanced along the all boundaries, particularly the southern and western boundaries that will form the new settlement-rural fringe.
- 9.10 NPPF (paragraph 175): conservation and enhancement of biodiversity by appropriate use of the mitigation hierarchy has been demonstrated, and opportunities to incorporate biodiversity

improvements in and around developments has been demonstrated. The other aspects of this paragraph are not relevant to RfR d).

9.11 NPPF (paragraph 17): not of relevance for RfR d).

#### Local Policy

9.12 Fareham Borough Council Local Plan Policy DSP13 i): not of relevance for RfR d).

9.13 Fareham Borough Council Local Plan Policy DSP13 ii): the proposals do demonstrate protected, priority and target species populations and their associated habitats, breeding areas, foraging areas are protected and enhanced. Compliance is demonstrated through the ES Update Chapter 10, fCTEMP and fLEMP, and can be secured through condition.

9.14 Fareham Borough Council Local Plan Policy DSP13 iii): the proposals do demonstrate that where appropriate, opportunities to provide a net gain in biodiversity have been explored and biodiversity enhancements incorporated. It is demonstrated that a 10% BNG is achievable, and significant biodiversity enhancements proposed. Compliance is demonstrated through the ES Update Chapter 10, fCTEMP and fLEMP, and can be secured through condition.

9.15 Fareham Borough Council Local Plan Policy DSP13 iv): the proposals do not prejudice or result in the fragmentation of the biodiversity network. Connectivity is maintained and enhanced. Compliance is demonstrated through the ES Update Chapter 10, fCTEMP and fLEMP, and can be secured through condition.

9.16 Fareham Borough Council Local Plan Policy DSP13 v): this aspect of Policy DSP13 is not directly addressed here. Benefits for biodiversity has been demonstrated through the ES Update Chapter 10 and fLEMP and can be secured through condition.

9.17 Fareham Borough Council Local Plan Policy DSP13 vi): all Adverse impacts have been minimised, and provision been made for mitigation compensation of those impacts. Compliance is demonstrated through the ES Update Chapter 10, fCTEMP and fLEMP, and can be secured through condition.

9.18 Fareham Borough Council Local Plan Policy DSP40 v): The proposal show that development of the Site would not have any unacceptable environmental implications. Compliance is demonstrated through the ES Update Chapter 10, fCTEMP and fLEMP, and can be secured through condition.

9.19 Fareham Borough Council Local Development Framework Core Strategy Policy CS4. There will be no adverse effects from the proposals on the sites listed in i.), ii.), iii.), iv.) of policy CS4. Compliance is demonstrated through the ES Update Chapter 10, sHRA, fCTEMP and fLEMP, and can be secured through condition.

## 10.0 RESPONSE TO REASONS FOR REFUSAL

### Natural England (NE)

- 10.1 During the determination period NE provided a single consultation response in August 2020. This was only in relation to the potential impacts on nearby Natura 2000 sites.

### Hampshire County Council Ecology Department Response 1

- 10.2 Following the applicant's ecological submissions to Fareham Borough Council in 2018, Hampshire County Council (HCC) Ecology department responded on the 5<sup>th</sup> October 2018.
- 10.3 In relation to reptiles was a requested correction to change the population status of reptiles from "low" to "good" where a typo had occurred. This has been done.
- 10.4 Also, in relation to reptiles, the officer was satisfied and raised no major concerns:

*"I acknowledge that the site is at Outline Stage...and there appears to be sufficient areas in the south and east which could be used as a reptile receptor site. Therefore, I raise no major concerns at this stage, provided that detailed information at Reserved Matters stage is provided to ensure the long-term suitability of the proposed reptile receptor area."*

- 10.5 In relation to badger, the officer was satisfied with construction mitigation measures, but wanted further clarification on operational effects as a NEAP was located nearby. However, since this response, the illustrative masterplan has changed, and the sett now falls within and the Bird Mitigation Area, and has been reassessed accordingly in the ES Update Chapter 10. It stated:

*"Whilst the measures to protect the badgers during construction is acceptable (e.g., erection of fencing to prevent accidental damage, covering excavations and open pipes etc.) the operational phase impacts have not been assessed. For instance, it is not evident how far the proposed NEAP is from the retained badger sett and if close proximity to this area will result in increased disturbance to badgers. Therefore, further clarification is required."*

- 10.6 The officer was also satisfied with bat activity "*subject to a sensitive lighting strategy*", and stated "*I do not consider roosting bats to be a constraint to the proposed development*" in relation to the low potential bat trees which at those times were proposed to be removed, but are now retained.
- 10.7 Other concerns relating to on-Site ecology was a lack of a cumulative effect's assessment in the EclA (Ecosupport, 2018), and lack of impact assessment in relation to noise (notably in relation to the SPA) and operational impacts on badger. This information is now provided within the ES Update Chapter 10 (FPCR, 2021).

### Hampshire County Council Ecology Department Response 2

- 10.8 In a second response by the HCC Ecologist dated 27<sup>th</sup> august 2020, the officer stated:

*"In my previous consultation responses, I had raised concerns in relation to...the lack of detail within the submitted EclA report, particularly in relation to the delivery of the reptile receptor site, operational phase impacts on badgers, construction phase noise impacts and cumulative impacts. No revised EclA report has been submitted and since then a number of changes (e.g) location of the bird reserve) has been made, which would necessitate the revision of this*

*document. Therefore, I maintain my concern in relation to impacts on protected species and mitigation measures required to offset these impacts”*

- 10.9 The only significant concern raised here in relation to on-Site ecology, was the request for a revised EclA in light of the changes to the proposed illustrative landscape masterplan since the original submission. This has now been provided through the updated ES Update Chapter 10.
- 10.10 In relation to reptiles, the response was not accurate, as shown above in Section 10.4, the officer had no major concerns as there was sufficient area on-Site for a reptile receptor site and concluded it could be dealt with at Reserved Matters Stage. In the most recent illustrative landscape masterplan (reference DD151L01B), the green space areas have changed. They are located on the west and south of the Site and they are now larger, and there is no reason why the conclusion would not be the same with regards to sufficient space for the receptor area.
- 10.11 In addition, the main area of improved grassland along the northern boundary is now retained and therefore, no translocation of reptiles is required as previously thought (unless baseline habitats change). Less than 0.01ha of existing reptile habitat will now be lost to facilitate landscape planting and ground works. Suitable mitigation methods, including temporary exclusion fencing of the developable area and supervised habitat manipulation, will be used to prevent the killing or injuring of reptiles during habitat removal and construction. These are detailed in the updated ES Chapter 10 and fCTEMP. Suitable habitat creation and enhancements are also outlined within the ES Update Chapter 10 and fLEMP to increase the habitat provision for reptiles along the Site boundary and within the Bird Mitigation Area and Western POS.
- 10.12 Further detail on the operational phase impacts on badgers (as per 10.5 above), construction phase noise impacts and cumulative impacts have also now been provided with the ES Update Chapter 10.

#### Conclusion

- 10.13 I conclude that sufficient information to demonstrate that protected and priority species will be protected and enhanced has now been provided through the ES Update Chapter 10 and the supporting documents, as outlined in this proof of evidence.
- 10.14 The main important ecology features present are of no more than local value, and given the substantial green space provision proposed, are all straightforward to deal with at Reserved Matters stage as proposed. It is fully anticipated that on receipt of the additional Appeal information submitted and this PoE, that it can be agreed that all these matters can be resolved by condition.

## **11.0 SUMMARY & CONCLUSIONS**

- 11.1 The Site has been the subject of detailed ecological survey work between 2017 and 2018 and in 2021. ES Chapter 10 and Appendices F1 and F3-7, provide an update ecological assessment of the Site, considering all ecology survey work undertaken between these dates. There is sufficient information to conclude that protected and priority species will be protected and enhanced, and that there will be a measurable biodiversity net gain.
- 11.2 All on Site ecological features of interest, including hedgerows, trees, badgers, bats, breeding birds and reptiles, will be protected, through retention included within the proposals and embedded mitigation and enhancements within the conditioned CEMP and LEMP documents.
- 11.3 Habitats within the Site are predominately of sub local-local ecological value. Three hedgerows and mature trees, which are priority habitats found at the Site, are the most sensitive ecological receptors identified. These will all be retained and protected during the construction and operational period. Given this protection the proposals are in accordance with the requirements Para 175 of the NPPF and policy DSP13.
- 11.4 Appropriate mitigation to avoid harm on badgers during construction will be implemented through a CEMP and the sett will be retained within the proposed green infrastructure, which will also provide an enhanced foraging resource for this species. Given these benefits, the proposals are considered to be in accordance with the requirements of the Badger Act 1992 and national and local planning policies, including DSP13 part ii.
- 11.5 No statutory ecological constraints to the development have been identified from the presence of a bat roost. The completed survey work did identify low numbers of bats using the Site boundaries for the purpose of foraging and commuting but the assemblage was dominated by common and widespread species which are unlikely to be affected by the proposals. The green infrastructure proposed by the development would provide enhancements for the local bat population and in addition to the implementation of a low-level lighting scheme will ensure a foraging resource is retained within the Site. From this it has been concluded that the proposed would comply with the requirements of the Habitat Regulations and WCA, and the proposals are likely to result in long term positive effects to the local bat population, according with DSP13 part ii.
- 11.6 The assemblage of breeding birds was only assessed as being of local level value and where necessary proportionate mitigation for preventing the disturbance or killing of breeding birds has been proposed. The overall assessment concluded the provision of the proposed enhancements, to be secured through the Site LEMP are likely to result in long term positive effects to the local populations of breeding birds, including priority species. Given these benefits, the proposals are again considered to be in accordance with the requirements of national and local planning policies, including DSP13 part ii and DSP40 part V..
- 11.7 The Site supports a good population of slow worm in boundary habitats including improved grassland, bramble scrub and hedgerows. The majority of these habitats are to be retained. Mitigation for construction impacts will be imbedded in a CEMP document and include proposals such as reptile drift fencing to isolate the construction area and habitat manipulation works for removal of any habitat. Significant enhancements for reptiles are proposed in a BMEP and will be implemented in the LEMP for the Site. This will likely result in a long term moderate positive impact for reptile species at the Site. Given these benefits, the proposals are again considered to

be in accordance with the requirements of national and local planning policies, including DSP13 part ii.

- 11.8 Habitats within the Site and affected by the proposals are of sub-local to local ecological value and the Site is of relatively low merit and significance in ecological terms. It does not provide significant contributions to habitats or species listed in S41 of the NERC Act 2006. The retention and enhancements of the on-Site hedgerows and the provision of other mitigation and enhancements through the Site green infrastructure, will ensure an overall long-term positive impact arising from the proposals, on the local ecological network for the protected species identified. Post development there will be a gain in both habitats (10.04%) and hedgerows (132.56%). There are also significant biodiversity enhancement provisions not included in the metric, such as 225 bat and 225 bird boxes. Overall, the proposals accord and exceed policies within the NPPF, NPPG, parts ii, iii and iv of policy DSP13 and part v. of policy DSP40.

In summary, the appeal scheme proposals would not result in the loss or deterioration of irreplaceable habitats as defined in the NPPF. Significant overall net gains to biodiversity would be delivered by the development. Therefore, from the submitted information and the evidence presented here, I conclude that the development proposals are in accordance with National and Local planning policies, and I respectfully request that this appeal is allowed.

**APPENDIX 1: HAMPSHIRE COUNTY COUNCIL CONSULTATION RESPONSE,  
5<sup>TH</sup> OCTOBER 2018**

[REDACTED]

[REDACTED]

**Subject:** P/18/1073/FP - Land to the South of Romsey Avenue Fareham

Dear Richard,

**P/18/1073/FP - Land to the South of Romsey Avenue Fareham - Hybrid Planning Application For Residential Development Of 225 Dwellings And Bird Conservation Area, Seeking Full Planning Permission For 58 Dwellings And Outline Planning Permission For 167 Dwellings With All Matters Reserved Except For Access**

Thank you for consulting me on this application which is supported by an Ecological Impact Assessment (EclA) report, Reptile Survey & Mitigation Strategy and, Proposal for Bird Conservation Area by Ecosupport (May 2018). In summary, the proposed mitigation in relation to the loss of a Solent Waders and Brent Goose Strategy 'Primary Support Area' is not considered to be sufficient and further justification is required. Furthermore, the submitted EclA report lacks the level of detail required at this stage. As Portsmouth Harbour Special Protection Area (SPA) and Ramsar is located 180m to the south-west of the site and as loss of a primary supportive habitat for SPA birds is considered to be one the main Likely Significant Effects at the Screening Stage, it is necessary to proceed to the Appropriate Assessment Stage. Unfortunately, sufficient information has not been submitted to enable the LPA to confidently conclude that the impact on SPA birds as a result of the loss of Primary Support Area for SPA birds can be mitigated. It is therefore necessary to request the applicant's ecologist to provide further information.

The site comprises an arable field with an unmanaged improved grass strip along the northern boundary, scrub and hedgerows / tree lines.

**Reptiles**

A reptile survey was carried out between April – May 2017 and confirmed the presence of a 'Good' population of slow worms, with the majority of the reptiles found within the northern boundary of the site to the rear of existing houses. I would strongly suggest that Section 2.3 of the report is amended as it states that a low population of slow worm and grass snake is present on site. I assume this is a typo and any reports submitted as part of a planning application should be accurate.

Based on the latest site layout, the report states that approximately 850m<sup>2</sup> of reptile habitat will be lost, which will be compensated by a 2m wide rough grassland buffer along the eastern boundary and wider areas along the south-eastern boundary of the site. The report states that the anticipated area of the receptor habitat will be approx.. 1400 m<sup>2</sup>. Whilst further information is required to demonstrate how the reptile receptor area will be delivered (e.g. proximity of the NEAP in the south-east to the receptor area, installation of a wooden knee rail to separate the receptor areas, etc.), I acknowledge that the majority of the site is at Outline Stage, the Illustrative Landscape Masterplan (Drawing no: DD151L01, Deacon Design) is only indicative and there appears to be sufficient areas in the south and east which could be used as a reptile receptor site. Therefore, I raise no major concerns at this stage, provided that detailed information at Reserved Matters stage is provided to ensure the long term suitability of the proposed reptile receptor areas.

**Badgers**

An annex sett has been recorded in the south-eastern corner of the site. Whilst the measures to protect the badgers during the construction phase is acceptable (e.g. erection of fencing to prevent accidental damage, covering excavations and open pipes, etc.), the operational phase impacts have not been assessed. For instance, it is not evident how far the proposed NEAP is from the retained badger sett and if close proximity to this area will result in increased disturbance to badgers. Therefore, further clarification is required.

### **Bats**

The activity surveys between April and September 2017 confirmed that the site gets used by at least 6 species of bats for foraging and commuting (common and soprano pipistrelle, noctule, serotine, brown long-eared and Myotis species), with the northern, south-eastern and southern boundary hedgerow / tree line being most frequently used. As the majority of these areas are proposed for retention, subject to a sensitive lighting strategy, I raise no concerns.

It is understood that only the row of mature ash along the south-western boundary will be removal to enhance the sight lines for waders and Brent geese. These have been assessed as low and negligible potential for bats. Provided that the trees with low potential are soft-felled and any additional trees due for removal are assessed appropriately, I do not consider roosting bats to be a constraint in relation to this development.

### **Dormice**

The surveys in 2017 did not record the presence of dormice on site.

### **Brent Geese and Wading Birds**

The entire site is a Solent Waders and Brent Goose (SW&BG) Strategy 'Primary Support Area' (F21). The Primary Support Areas are land that, when in suitable management, make an important contribution to the function of the Solent wader and Brent goose ecological network. There will be a requirement for the off-setting area, in this case the western section of the site, to fulfil the same special contribution and particular function of the areas lost or damaged for the same species of birds. The appropriateness of any off-setting areas in respect of fulfilling the required ecological function should be judged against a number of criteria. Based on this, I do not consider that sufficient information has been provided to enable the LPA to assess the suitability of the off-setting area. My detailed comments are set out below:

- Habitat Type – The application site is understood to be an arable field which is to be replaced with short amenity grassland with scrapes in the south which is acceptable.
- Disturbance – installation of fencing and a ditch has been proposed to offset disturbance from recreational use and unmanaged public access which is acceptable.
- Area of habitat – *'where the replacement habitat would be of equal ecological quality the area required should be of a similar extent to the site being lost or damaged. There may be situations however, where a greater area is required when habitat created may be of poorer quality to that lost or damaged, or there is a high level of risk involved. Similarly, if significant ecological enhancements are possible that increase the carrying capacity of the replacement site above that of the Primary Support Area affected then a smaller area of replacement habitat might be acceptable. This might include the partial loss of a Primary Support Area providing the remainder can be made significantly improved in habitat quality with long term management so as to provide for a greater capacity for the target species than the original site. In all such cases the test will be to ensure the replacement habitats provide a clear and permanent net gain for the target species.'* Our survey work in 2013 and 2014 shows that approx. 300 Brent geese were recorded, mainly feeding in the centre of the site. Waders such as oystercatchers and curlews were also recorded mainly to the west, as these areas were recorded to be flooded in the winter. It is understood that the

entire application site measures 12.55ha, whilst the allocated Bird Conservation Area is approximately 2.8ha. This equates to a 78% reduction in 'Primary Support Area'. No justification has been provided in the submitted ecological reports as to how the area of habitat for Brent Geese and Waders was calculated. If the proposed habitat for the Bird Conservation Area is considered to be of higher quality, how will this increase its carrying capacity to the extent to compensate for the loss of the majority of the existing suitable habitat? How will an area of 2.8ha support over 300 individual Brent geese and a smaller number of waders?

- Timing and availability of habitat – the submitted ecology report states that '*Construction of the Bird Conservation Area will commence at the earliest opportunity to enable this area to be in place prior to first occupation of the housing development*'. This is not acceptable. The proposed Bird Conservation Area should be operational 'in time' to offset the adverse effects, with evidence to show it is functioning and readily available to SPA birds prior to any loss or damage to the original site. Therefore, the Bird Conservation Area should be available prior to any habitat disturbance/loss in the eastern section of the site. This means the Bird Conservation Area should be functional from October, with surveys informing if the provided habitat is functioning in supporting similar numbers of Brent geese and waders, prior to any works damaging or destroying the habitats in the eastern section of the site.
- Geographic location – this criteria is met as an onsite off-setting area has been selected. However, I have concerns in relation to the presence of housing in the north and east of the proposed Bird Conservation Area and the impact this would have on the suitability of the proposed area.

### **Impact Assessment**

Paragraph 6.1.2 of the EclA report fails to provide a meaningful impact assessment on the construction phase generated noise. It is worth noting that noise during construction phase is not solely related to vegetation clearance but also construction activities (e.g. piling, drilling, excavations, etc.) and machinery will also be producing noise. Therefore, impact assessment on the sensitive receptors of the site, of most note SPA birds using the Primary Support Area should be included in this section.

Operational Phase impacts on the retained annex badger sett has not been included in the EclA report.

### **Cumulative Impacts**

The submitted EclA lacks a Cumulative Impact Assessment section. For instance the east of the habitats immediately to the east as part of a separate planning application (Cranleigh Road). Reasonable effort should also be made to identify any likely future developments in the area. For instance, it is understood that the land to the south of the application site may come forward for planning which is also a Primary Support Area. Therefore any further future reductions in the available area to Brent geese and waders as part of the network of the sites supporting the SPA birds should be assessed.

### **Designated Sites**

Portsmouth Harbour Special Protection Area (SPA), Ramsar and Site of Special Scientific Importance (SSSI) is located 180m to the south-west of the site. In April 2018, the Court of Justice of the European Union published a ruling in the Case C323/17 ('People Over Wind') with regards to the Habitats Directive. Therefore, I have considered this application in light of this ruling which must be interpreted as meaning that provision of mitigation measures intended to avoid or reduce the harmful effects of the plan on a European designated site at the screening stage is no longer appropriate.

Due to the large scale of the proposed works and the entire site being classed as a SW&BG 'Primary Support Area', recreational disturbance on the European designated sites and loss of a primary supportive habitat for SPA birds is considered to be the main two Likely Significant Effects (LSE) at the Screening Stage and therefore it is necessary to proceed to the Appropriate Assessment Stage. Whilst I can confirm that the LSE as a result of increased recreational pressure can be mitigated through the SRMP (Solent Recreation Mitigation Partnership) and securing the appropriate financial contribution from the developer, sufficient information has not been submitted to enable the LPA to confidently conclude that the impact on SPA birds as a result of the partial loss of Primary Support Area for SPA birds can be mitigated.

Please do contact me if you need any further information.

Kind regards,  
Maral

Please note that this advice is given in accordance with the Service Level Agreement that has been signed between Hampshire County Council and your Council. These comments are expressed as a professional view provided to Fareham Borough Council and should not, therefore, be interpreted as those of Hampshire County Council.

**Maral Miri (MSc, CEnv, MCIEEM)**

**Senior Ecologist  
Ecology Team**

Economy, Transport and Environment Department



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**APPENDIX 2: HAMPSHIRE COUNTY COUNCIL CONSULTATION RESPONSE,  
27<sup>TH</sup> AUGUST 2020**

[REDACTED]

**Subject:** P/18/1073/FP - Land to the South of Romsey Avenue

Dear Richard,

**P/18/1073/FP - Land to the South of Romsey Avenue Fareham - Outline Planning Application For Residential Development Of 225 Dwellings, Bird Conservation Area And Area Of Public Open Space With All Matters Reserved Except For Access**

Thank you for re-consulting me on this planning application. In my previous consultation responses, I had raised concerns in relation to the loss of a Solent Waders and Brent Goose Strategy 'Primary Support Area' and the lack of detail within the submitted EclA report, particularly in relation to the delivery of the reptile receptor site, operational phase impacts on badgers, construction phase noise impacts and cumulative impacts. No revised EclA report has been submitted and since then a number of changes (e.g. location of the bird reserve) has been made, which would necessitate the revision of this document. Therefore, I maintain my concern in relation to impacts on protected species and mitigation measures required to offset these impacts.

A Bird Mitigation Reserve Strategy by Lindsay Carrington Ecological Services Limited (August 2020) has now been submitted. It is understood that Natural England's Discretionary Advice Service was used to design the bird reserve. The location of the bird reserve is in the southern section of the site and will cover approximately 4.2ha, with approximately 3.7ha of the reserve designated to support Brent geese. Justification has been provided in relation to the location of the bird reserve in the south and its size. A comparison has been made with the size of other available Brent geese sites in the wider landscape. It has also been confirmed that the bird reserve will be established prior to the commencement of any development, with the grassland sown with a white clover and perennial ryegrass seed mix. Information has also been provided in relation to the management of the bird reserve and monitoring for an initial ten-year period. Furthermore, a SuDS in the south-western corner is proposed, with new habitat incorporated for sand martin and kingfisher.

Overall, provided that Natural England are satisfied with the proposed bird reserve area, I raise no concerns and recommend that the necessary implementation, management and monitoring of the bird reserve is secured through a S106.

Please do not hesitate to contact me if you require any additional information.

Kind regards,  
Maral

*Coronavirus (Covid-19)*

*Hampshire County Council's response to the Covid-19 is available here (<https://www.hants.gov.uk/socialcareandhealth/coronavirus>).*

*In line with Government advice to reduce non-essential travel and work from home where possible, Ecology officers are now working remotely. Whilst we will endeavour to conduct our services in a timely manner and to meet statutory timescales where we can, there may be some impact to the services we deliver. We will ensure that we keep all*

*applicants / interested parties informed of any further impacts to our services should they arise. The Council's response also means that no non-essential site visits or face to face meetings will be undertaken until further notice. Essential and contractual surveys may continue take place where there is no risk to the surveyor or the public, and in line with Government advice. This will be reviewed on an on-going basis.*

**Maral Miri (MSc, CEnv, MCIEEM)**

**Senior Ecologist**

**Ecology Team**

Economy, Transport and Environment Department



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**APPENDIX 3: APPENDIX F6 BIODIVERSITY NET GAIN ASSESSMENT PLAN  
REV B (JULY 14<sup>TH</sup> 2021 UPDATE)**

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### Key

- Site Boundary
- Proposed Habitats**
- Urban - Developed land; sealed surface 60% and Urban - Vegetated garden 40%
- Urban - Developed land; sealed surface
- Grassland - Modified Grassland
- Grassland - Other neutral grassland, moderate condition
- Grassland - Other neutral grassland, moderate condition
- Grassland - Other neutral grassland, poor condition
- Wetland - Reedbeds
- Lakes - Ponds (Non-Priority Habitat)
- Lakes - Temporary lakes, ponds and pools
- Meadow Grassland
- Retained hedgerow
- Enhanced hedgerow
- Newly planted hedgerow

Habitats On-site Baseline = 28.87  
 Habitats On-site post intervention = 31.77  
 Habitats On-site Total Change = +2.90 (+10.04%)

Hedgerows On-site Baseline = 4.70  
 Hedgerows On-site post intervention = 10.92  
 Hedgerows Total Change = +6.23 (+132.56%)

7m wide verge of meadow grassland along the northern and western boundary of Brent Goose mitigation areas to meet 10% net gain requirement.



**APPENDIX 4: NITROGEN BUDGET CALCULATION SPREADSHEET (JULY 15<sup>TH</sup>  
2021 UPDATE)**

## Nitrogen Budget Calculation

<b>Planning Application Reference No.</b>	P/18/1073/FP
<b>Site Name:</b>	Land to the South of Romsey Avenue Fareham
<b>Additional Information:</b>	
Please note that this Nitrogen budget calculation has been updated on the request of the Ecologist acting on behalf of Fareham Borough Council. Therefore the calculation in Stage 3 step one for land classed as nature reserve, uses the leaching rate for lowland grazing as requested. It is not possible to change the text to reflect this in the spreadsheet.	
<b>Date:</b>	15.07.2021

<b>Stage 1</b>	<b>Calculate total Nitrogen in kg per year derived from the development that would exit the Wastewater Treatment Works (WwTW) into Solent catchments after treatment</b>	
<b>Step 1</b>	<b>Calculate additional population</b>	
	Enter the number of units proposed	225
	Net population increase per housing unit	2.40
	<b>Total net population increase generated by the development</b>	<b>540.00</b>
<b>Step 2</b>	<b>Calculate wastewater volume generated by the development</b>	
	Water use in litres per person per day	110
	<b>Total wastewater volume generated by the development (litres per day)</b>	<b>59,400</b>
<b>Step 3</b>	<b>Confirm receiving WwTW and permit limit</b>	
	Select the wastewater treatment works the development will connect to	Peel Common
	<b>Wastewater treatment works' permit limit (mg per litre)</b>	<b>9.0</b>
	<b>Wastewater treatment works' discharge level (mg per litre)</b>	<b>8.1</b>
<b>Step 4</b>	<b>Calculate total nitrogen in kg per year discharged by the WwTW</b>	
	<b>Deduct acceptable Nitrogen loading in wastewater (mg per litre)</b>	<b>6.1</b>
	<b>Total Nitrogen discharged by WwTW (mg per day)</b>	<b>362,340.0</b>
	<b>Total Nitrogen discharged by WwTW (kg per day)</b>	<b>0.3623</b>
	<b>Total Nitrogen discharged by WwTW (kg per year)</b>	<b>132.3</b>

<b>Stage 2</b>	<b>Calculate existing (pre-development) nitrogen from current land use of the development site</b>	
<b>Step 1</b>	<b>Total area of development site</b>	
	Enter the total area of the development site (hectares)	12.60
<b>Step 2</b>	<b>Identify current land uses of the development site</b>	
	Enter area currently used for urban development (hectares)	0.00
	Enter area currently used for open space / greenfield (hectares)	0.00
	Enter area currently used for woodland (hectares)	0.00
	Enter area currently used for community food growing / catchment average (hectares)	0.00
	Enter area currently used for cereals (hectares)	12.60
	Enter area currently used for dairy (hectares)	0.00
	Enter area currently used for general cropping (hectares)	0.00
	Enter area currently used for horticulture (hectares)	0.00
	Enter area currently used for pig farming (hectares)	0.00
	Enter area currently used for lowland grazing (hectares)	0.00
	Enter area currently used for mixed farming (hectares)	0.00
	Enter area currently used for poultry farming (hectares)	0.00
	<b>Check to help ensure that sum total of land uses in Step 2 equals site area in Step 1</b>	<b>12.6</b>
<b>Step 3</b>	<b>Calculate nitrogen load from current land usage</b>	
	<b>Total Nitrogen load from current land usage (kg per year)</b>	<b>393.1</b>

## Nitrogen Budget Calculation

<b>Stage 3</b>	<b>Calculate nitrogen load for the non-built land uses proposed for the development site</b>	
<b>Step 1</b>	<b>Identify proposed land uses of the development site</b>	
	Enter the total urban area to be created (hectares)	6.70
	Enter the total designated open space / SANG area to be created (hectares)	1.40
	Enter the total nature reserve area to be created (hectares)	12.00
	Enter the total woodland area to be created (hectares)	0.00
	Enter the total community orchard area to be created (hectares)	0.00
	Enter the total community food growing / allotment area to be created (hectares)	0.00
	<i>Check to help ensure that sum total of proposed land uses equals site area in Stage 2</i>	20.10
<b>Step 2</b>	<b>Calculate total Nitrogen load from proposed land uses</b>	
	<i>Total Nitrogen load from future land uses (kg per year)</i>	162.81

<b>Stage 4</b>	<b>Calculate the net change in Nitrogen load from the proposed development</b>	
<b>Step 1</b>	<b>Identify Nitrogen load from wastewater (Stage 1)</b>	
	<i>Nitrogen leaving wastewater treatment works (kg per year)</i>	132.25
<b>Step 2</b>	<b>Calculate net change in Nitrogen load from land use changes</b>	
	<i>Total Nitrogen load from future land use (kg per year)</i>	-230.31
<b>Step 3</b>	<b>Calculate total Nitrogen budget for the development site</b>	
	<i>Nitrogen budget for the site (kg per year)</i>	-98.06
<b>Step 4</b>	<b>Calculate precautionary buffer if Nitrogen budget exceeds zero</b>	
	<i>Precautionary Nitrogen buffer (kg per year)</i>	0.00

<b>Total Nitrogen budget for the proposed development (kg per year)</b>		<b>-98.1</b>
<b>Development will be Nitrogen neutral - no mitigation will be required</b>		

**Agreed Statement of  
Highway Matters**

**Land to the south of  
Romsey Avenue  
Fareham**

**Prepared on behalf of  
Foreman Homes Ltd**

**By David Wiseman  
BA (Hons) MRTPI**

**Stuart Michael  
Associates Limited**

**June 2021**



**SMA Ref: 6729/01**

**Issue Status: 05/Final**

<b>DOCUMENT CONTROL</b>			
<b>Project</b>	<b>Land to the South of Romsey Avenue Porchester Fareham</b>		
<b>Job No.</b>	<b>6729</b>		
<b>Document Title</b>	<b>Statement of Agreed Transport Matters</b>		
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<b>Prepared by</b>	David Wiseman	<b>Date</b>	06/05/2021
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04 Forth Draft	Issue to HCC	DLW	25/05/2021
05 Final	Issue to HCC	DLW	01/06/2021



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## **1.0 MATTERS IN AGREEMENT**

- 1.1 This statement sets out the areas of agreement between the appellant (Foreman Homes Ltd) and Hampshire County Council (HCC) on highway and transport matters related to the planning appeal at Land south of Romsey Avenue, Fareham (APP/A1720/W/21/3271412), hereafter referred to as 'the development'.
- 1.2 The parties agree that the below plans and reports - on highways and transport submitted with the application (P/18/1073/FP) in October 2019 is the most up to date evidence for this development and forms the basis of the contents of this agreed Statement of Transport Matters (SoTM).
- 1.3 Following submission of the Planning Application, HCC requested additional highway/transport information during the Consultation process. This was provided in the form of an Addendum Transport Assessment and additional Technical Notes to the satisfaction of the HCC.
- 1.4 Based upon the above, HCC did not raise any highway objection to the application, and there is agreement as to acceptability of the scheme in locational and highway safety terms.

### **Plans**

- 5611.002 Rev D: Proposed Site Access
- 5611.025 Rev C: Offsite junction, footway, cycleway and Parking Improvements.

### **Reports**

- Transport Assessment - August 2018
- Addendum Transport Assessment - October 2019
- Residential Framework Travel Plan Issue 4 – February 2019

### **Technical Notes**

- Review of on-street car parking – June 2019
- Walking and Cycling Audit – May 2019

- A27 Porchester Road/ Shearwater Avenue/ A27 Cams Hill/ Downend Road Signal Junction Improvement Assessment – March 2020

## **2.0 THE TRANSPORT ASSESSMENT**

- 2.1 The Transport Assessment (TA) was prepared by Stuart Michael Associates (SMA) in August 2018 in support of an outline planning application for residential development of 225 dwellings with all matters reserved except for access.
- 2.2 Following consultation with HCC Highways an Addendum TA was prepared by SMA and submitted to HCC in October 2019.
- 2.3 Further information relating to concerns raised regarding internal layout and parking was not formally submitted to the LPA and therefore no formal comments were made by the Highway Authority. Given the application was changed during the planning process to outline only, matters of internal layout and parking are to be considered at the reserved matters stage, should the development come forward.

## **3.0 SITE ACCESS**

- 3.1 The site access is proposed by utilising and improving the existing access that serves a garage block behind No.14 Romsey Avenue as shown on **Drawing 5611.002 Rev D**.
- 3.2 The access road will be constructed to an adoptable standard providing a minimum 5.5m wide carriageway and a 2m wide footway on the eastern side with a parking bay provided on the western side to allow up to 4 cars to be parked.
- 3.3 The proposals shown on drawing 5611.025 Rev C include the provision of a parking bay along the eastern side of Beaulieu Avenue to accommodate all observed existing on-street parking. The introduction of the parking bay will enable Beaulieu Avenue to have a 5.5m wide running carriageway.

## 4.0 CAR PARKING

- 4.1 At the request of HCC, SMA undertook a parking survey along Romsey Avenue and Beaulieu Avenue to establish where existing on-street parking was occurring on both residential roads.
- 4.2 HCC had raised concern that to enable access to the site for larger vehicles' such as delivery vans, refuse vehicles' and emergency vehicles mitigation to avoid conflict and ensure visibility splays at junctions was required.
- 4.3 The parking survey undertaken demonstrated that if parking restrictions were added around the bellmouth of the site access / Romsey Avenue junction and around the Romsey Avenue/ Beaulieu Avenue junction there was sufficient parking capacity within reasonable proximity to the existing parking locations to accommodate the forecast displaced parking. The average displacement is around 22m with an approximate walking time of 15 seconds.
- 4.4 Based upon this survey and the parking analysis HCC considered that the introduction of parking restrictions will not incentivise inappropriate or dangerous parking and as such will not result in a severe impact on the operation of the highway network. HCC noted that FBC as planning authority should satisfy themselves regarding the amenity impact of the increased vehicular use of this section of highway, both in terms of the amenity acceptability of displaced parking due to the introduction of parking restrictions increasing walking distances to alternative parking spaces and the amenity acceptability of other impacts to the surrounding residential area, such as air quality and noise levels.

## 5.0 SUSTAINABLE TRAVEL

- 5.1 The site is located approximately 1.9km west of Porchester town centre and 2.8km east of Fareham town centre. A number of key facilities are within proximity of the site and are detailed in **Table 5.1** below.

**Table 5.1: Approximate Walk & Cycle Journey Times & Distance to Key Destinations**

Facility	Location	Distance from site	Approx. Walking Time	Approx. Cycling Time
<b>Education Facilities</b>				
Wicor Primary School	Hatherley Crescent	960m	11 ½ minutes	3 minutes
Cams Hill School	Shearwater Avenue	1.3km	16 minutes	4 minutes
Portchester Community School	White Hart Lane	2.2km	26 minutes	7 ½ minutes
<b>Employment Facilities</b>				
Castle Trading Estate	Castle Trading Estate	2.5km	30 minutes	8 ½ minutes
Fort Wallington Industrial Estate	Military Road	2.7km	32 minutes	9 minutes
Portchester Town Centre	West Street	1.9km	22 ½ minutes	6 ½ minutes
Fareham Town Centre	West Street	2.8km	33 ½ minutes	9 ½ minutes
<b>Retail Facilities</b>				
M&S Simply Food	A27, West Street	1.1km	13 minutes	3 ½ minutes
Portchester Town Centre	West Street	1.9km	22 ½ minutes	6 ½ minutes
Fareham Shopping Centre	West Street	2.8km	33 ½ minutes	9 ½ minutes
<b>Health Facilities</b>				
Westlands Medical Centre	Westlands Grove	1.5km	18 minutes	5 minutes
<b>Leisure Facilities</b>				
247 Fitness Fareham Gym	Downend Road	1.6km	19 minutes	5 ½ minutes
Cams Hall Golf Course	A27, Portchester Road	2.3km	27 ½ minutes	7 ½ minutes
<b>Community Facilities</b>				
Portchester Community Centre	Westlands Grove	1.9km	22 ½ minutes	6 ½ minutes
Portchester Library	West Street	1.9km	22 ½ minutes	6 ½ minutes
<b>Transport Facilities</b>				
Bus Stops	A27, Portchester Avenue	520m	6 minutes	1 ½ minutes
Fareham Bus Station	West Street	3km	35 ½ minutes	10 minutes
Portchester Rail Station	Station Road	2km (on foot)	25 minutes	6 minutes

Notes: 1. Distance is the distance from the centre of the site measured along existing roads and footpaths.  
2. Walking time is the walking time from the centre of the site based on an average walking speed of 1.4m/s set out in IHT's 'Guidelines for Providing for Journeys on Foot'.  
3. Cycling time is the cycling time from the centre of the site based on a cycling speed of 5m/s set out in DMRB Volume 11, Section 3.

- 5.2 SMA carried out a walking and cycling audit between the site and Porchester town centre and railway station.
- 5.3 The audit highlighted potential measures to aid the delivery of safe walking and cycle routes from the site.
- 5.4 The Appellant agreed to provide a contribution towards improved footway provision (dropped kerbing and tactile paving) along routes towards Fareham town centre and railway station of £37,400.
- 5.5 The Appellant has also agreed to provide a financial contribution of £907,179 towards HCC cycle safety improvement scheme at the Cornaway Lane roundabout.
- 5.6 A contribution of £18,000 has been agreed to widen footways in the vicinity of the site to current standards.
- 5.7 The Highway Authority raised no objection in terms of access to local services and facilities, subject to payment of the contributions outlined above to encourage walking and cycling from the site to local destinations.

## **6.0 TRIP DISTRIBUTION**

- 6.1 Although Wilcor Primary School is only a 12 minute walk from the proposed development site, it is recognised that some parents may choose to drive children to the school exacerbating the existing parking and traffic flow issues during school pick up and drop off times on Hatherley Road.
- 6.2 A contribution of £85,000 has been agreed to provide an updated School Travel Plan and implement measures to maintain safety and encourage sustainable modes access to the school, with the aim of improving conditions for those traveling by foot, cycle, scooter or bus and reducing reliance on low occupancy private car travel. HCC consider this adequate mitigation for the

forecast increase in traffic movements in the vicinity of the school due to the development.

## **7.0 JUNCTION MODELLING**

7.1 The TA and Addendum TA considered the traffic impact of the development; operational capacity assessments were carried out at the following junctions:

- Site access / Romsey Avenue
- Romsey Avenue / Beaulieu Avenue
- Beaulieu Avenue / A27
- Hatherley Drive / Cornaway Lane (including during school peak hours)
- A27/ Downend Road
- A27 Delme Arms Roundabout

7.2 The specific inputs of the junction modelling undertaken are agreed between parties:

- The base scenario capacity models and the results of this modelling exercise are agreed
- The input geometry to the junction modelling is agreed

## **8.0 MITIGATION**

### **Site Access / Romsey Avenue**

8.1 It is agreed that the proposed Site Access / Romsey Avenue junction operates with reserve capacity.

### **Romsey Avenue / Beaulieu Avenue**

8.2 It is agreed that the Romsey Avenue / Beaulieu Avenue junction operates with reserve capacity.

### **Beaulieu Avenue / A27**

8.3 It is agreed with proposed widening works and adjustments to the bellmouth radii on Beaulieu Road the junction operates within capacity.

### **Hatherley Drive / Cornaway Lane**

- 8.4 It is agreed that the Hatherley Drive / Cornaway Lane junction operates with reserve capacity.

#### **A27 / Downend Road signalised Junction**

- 8.5 It is recognised that the signal junction is forecast to operate with negative Practical Reserve Capacity in the future year and the applicant has agreed provide a financial contribution of £60,350 to mitigate against the development.

#### **A27 Delme Arms Roundabout**

- 8.6 A strategic improvement of the Delme Arms roundabout is proposed by HCC and the Applicant has agreed to provide a financial contribution of £12,323 towards the Council scheme.

### **9.0 SUMMARY AND CONCLUSION**

- 9.1 It is agreed that HCC as Highway Authority raise no objections to the proposed development. Therefore HCC have confirmed that the site is acceptability in highway safety and sustainability terms, subject to the below Condition and the appellant entering onto a S106 Agreement to secure the following package of mitigation.

- 9.2 A Transport contribution of £1,126,252 towards the following:

- Improvements in the vicinity of Delme Roundabout (£12,323);
- Improvements in the vicinity of Downend Road /A27 (£60,350);
- Cornaway Lane Roundabout cycle improvements (£907,179);
- Footway widening in the vicinity of the site (£18,000);
- Walking audit measures (£37,400)
- School Travel Plan (£85,000)
- Beaulieu Avenue parking restriction TRO contribution (£6,000)
  
- Payment of a Travel Plan approval and monitoring fees and provision of a surety mechanism to ensure implementation of the Travel Plan.
  
- Implementation of highway works shown on drawings 5611.025 Rev C and 5611.002 Rev D prior to commencement of the development

including payment of fees associated with progression of the TRO process. Any works requiring a TRO must be satisfactorily completed prior to commencement of the development.

Condition:

A Construction Traffic Management Plan shall be submitted to and approved by the Planning Authority in writing before development commences. This should include; a restriction on construction traffic vehicle size, restrictions on construction traffic movements during peak and school drop off/ pick up times, construction traffic routes (including a restriction for no construction traffic to use Hatherley Crescent or Cornaway Lane), parking and turning provision to be made on site, measures to prevent mud from being deposited on the highway and a programme for construction. The agreed details shall be fully implemented before the development is commenced.

Reason: In the interests of highway safety.

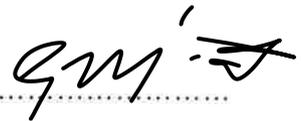
**David Wiseman – Director, Stuart Michael Associates**

Signed Agreement on behalf of the Appellant



**Gemma McCart – Transport Team Leader**

Signed Agreement on behalf of the Highway Authority (HCC)



**Town and County Planning Act 1990  
Section 78 (As Amended)**

**STATEMENT OF COMMON GROUND**

**Prepared by:**

**Woolf Bond Planning LLP  
for Foreman Homes Ltd**

**and**

**Fareham Borough Council**



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**Land South of Romsey Avenue, Fareham**

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**PINS Ref:** APP/A1720/W/21/3271412

**LPA Ref:** P/18/1073/FP

**WBP Ref:** 7671

**8<sup>th</sup> July 2021**

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### **Appendices**

**Appendix A            Letter from LLFA (17 June 2021)**

## EXECUTIVE SUMMARY

- 1 This Statement of Common Ground relates to a Town and Country Planning Act 1990 Section 78 Planning Appeal lodged by Woolf Bond Planning LLP on behalf of Foreman Homes Ltd against the Council's decision to refuse outline planning permission for residential development of 225 dwellings, a bird conservation area and public open space, with all matters reserved except for access (LPA Ref: P/18/1073/FP).
- 2 The Statement records the matters upon which the parties have agreed with the intention of leading to the preparation of more focused proofs of evidence thus saving time and resources at the inquiry.
- 3 Following discussions between the Appellant and the Local Planning Authority there is agreement in relation to the following matters:
  - a) The Council cannot currently demonstrate a five year supply of deliverable housing land (see separate Housing Land Supply SoCG).
  - b) Although the parties disagree as to the extent of the shortfall, it is nevertheless agreed, on either position, that the shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant. The separate Five Year Housing Land Supply SoCG records the position.
  - c) The development plan policies for the supply of housing are out of date.
  - d) The Council does not have a freestanding landscape reason for refusal. Although (as with any greenfield housing proposal of this scale) a degree of adverse landscape and visual impact will occur, the parties agree that this has been minimised for the purposes of DSP40 criterion iii. The residual landscape and visual impacts could be successfully minimised by a positive design response and landscaping strategy at the reserved matters stage.
  - e) The lack of a five year supply of deliverable housing land triggers the operation of policy DSP40 which was introduced precisely to operate as an exception to the otherwise restrictive policies of CS14 and DSP6, to permit in appropriate cases development in breach of those policies when the Council could not demonstrate a 5 year housing land supply.
  - f) As such, the most relevant policy for determining the acceptability of residential development on the Appeal Site is Policy DSP40.

- g) The Appeal Scheme satisfies the requirements at criteria (i) to (iv) of Policy DSP40 on account of the following:
- i. The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;
  - ii. The proposal is sustainably located adjacent to, and well related to, the existing settlement boundary, and can be well integrated with the neighbouring settlement;
  - iii. The proposal can be sensitively designed to reflect the character of the area (with the Council retaining control over the detailed scheme design at the reserved matters stage) and to minimise any adverse impact on the Countryside
  - iv. The proposal is deliverable in the short term (controlled as it is by a housing developer with considerable experience in the local market)
- h) There remains a dispute between the parties in relation to part (v) of the policy in so far as the Council considers the Appeal Development would have unacceptable environmental, amenity and traffic implications.
- i) The Council objects to the Scheme in relation to the purported environmental impacts of the scheme having regard to the failure to mitigate the likely adverse effects on the integrity of European sites, on-site ecological matters and the loss of BMV agricultural land.
- j) It is agreed that the loss of BMV agricultural land alone would not be sufficient to warrant the refusal of planning permission but remains a matter to be weighed as a harm in the overall planning balance. Notwithstanding, it is agreed that the better the quality of agricultural land being lost, the greater the weight to be afforded on the negative side of the planning balance.
- k) The Council considers the development would lead to a displacement of car parking on Beaulieu Avenue and Romsey Avenue which would be inconvenient to users of the highway and harmful to highway safety. The Appellant considers the Appeal Scheme would not unduly inconvenience users of the highway and nor would it be harmful to highway safety. Hampshire County Highways raise no highways safety and/or sustainability objection to the Scheme and an Agreed (signed and dated) Statement of Highway Matters has been prepared between the Appellant and Hampshire County Highways. This was submitted to PINS on 11<sup>th</sup> June 2021.
- l) There is no objection to the Scheme in relation to its sustainability in location terms having regard to accessing local services and facilities.

- m) Following an exchange of correspondence between the Appellant and Hampshire County Council as the Lead Local Flood Authority (“LLFA”), the Council is now satisfied that drainage matters can be dealt with by means of a condition. A copy of the LLFA’s letter (dated 17 June 2021) which removes their holding objection is attached at **Appendix A**. Fareham Borough Council is no longer pursuing this reason for refusal.
  
- 4 As such, the forthcoming inquiry should therefore focus on the issues where there continues to be disagreement between the principal parties in relation to the following:
  - a) Planning policy compliance
  - b) The impact of the scheme upon European Sites in the Solent
  - c) The impact on protected and priority species on-site
  - d) Highways safety and convenience
  
- 5 The parties have agreed that the Appellant will provide planning obligations in the form of a unilateral undertaking under Section 106 regarding necessary contributions subject to the satisfactory provision regarding delivery.
  
- 6 Subject to the satisfactory completion of the Section 106, this will ensure that if the appeal is allowed and planning permission is granted, all of the financial contributions and other compliant obligations required to enable the proposed development to go ahead are in place and/or will be delivered at the appropriate times.

## **1.0 INTRODUCTION**

- 1.1. Preparation of this document follows discussions between Steven Brown of Woolf Bond Planning LLP, acting on behalf of the Appellant and Richard Wright acting on behalf of Fareham Borough Council.
- 1.2. It is agreed that it would be helpful to seek agreement on relevant factual information before preparing proofs of evidence for the Appeal.
- 1.3. It is also agreed that there should be a common list of reference documents and these are to be referenced as Core Documents (“CDs”) to the Inquiry.

## **2.0. DESCRIPTION OF THE APPEAL SITE AND SURROUNDING AREA**

- 2.1. The Appeal Site benefits from a sustainable location, within walking and cycle distance from local services and facilities, including schooling and employment.
- 2.2. The Site is edged red on Site Location Plan No. 16.140.01C and extends to approximately 12.55ha.
- 2.3. The Site is broadly rectangular in shape and is currently accessed from Romsey Avenue to the north via a field gate.
- 2.4. The eastern boundary is formed by recreational open space associated with the development of 120 dwellings by Persimmon Homes off Cranleigh Road (which scheme was allowed at appeal by decision dated August 2017). The Appeal Scheme includes a footpath link to this boundary which enables the open space to be integrated with the proposed development contingent on an arrangement on access with the adjacent landowner.
- 2.5. To the south west of the Appeal Site lies the Wicor Recreation Ground.
- 2.6. The Appeal Site is located adjacent to, but ultimately beyond the settlement boundary for Portchester.
- 2.7. No part of the Appeal Site (or adjoining blue land) forms part of or adjoins a Conservation Area, nor is it identified as having any specific status in relation to its landscape value in planning terms.
- 2.8. Local Plan Policy DSP14 sets out the approach to the consideration of development on supporting sites for Brent geese and waders. Policy DSP14 expressly allows for the classification of sites for Brent Geese or Waders to be 'updated'. It is agreed that the site is identified in the Solent Waders and Brent Goose Strategy 2020 and supporting maps as a Primary Support Area.

### 3.0 DESCRIPTION OF THE APPEAL SCHEME

#### Scheme Description

3.1. The Appeal Scheme will be described in evidence.

3.2. The Appeal Scheme description<sup>1</sup> is as follows:

***“Outline application for 225 dwellings, bird conservation area and area of public open space, with all matters reserved except for access.”***

3.3. Only the principle of developing the site for 225 dwellings and associated provision of a bird conservation area and open space along with the means of access are to be determined as part of this outline application.

3.4. Appearance, landscaping, layout and scale are reserved for subsequent determination.

3.5. The Appeal Scheme is set out on the following plans:

#### The Scheme

- i. Site Location Plan No. 16.140.01C
- ii. Site Areas Plan No. 16.140.28
- iii. Proposed Access Drawing No. 5611.002D
- iv. Highway Works Plan No. 5611.025C

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<sup>1</sup> Originally submitted as a hybrid seeking full planning permission for 58 dwellings and outline planning permission for 167 dwellings but amended during determination to an outline application, with only access to be determined.

## 4.0 PLANNING POLICY

### The Development Plan

4.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement that planning applications are to be determined in accordance with the Development Plan unless other material considerations indicate otherwise.

4.2. At the local level, the development plan comprises as follows:

- Local Plan Part 1: Core Strategy (2011-2026)
- Local Plan Part 2: Development Sites & Policies (2015)
- Local Plan Part 3: Welborne Plan (2015)

4.3. The parties agree that the relevant policies applicable to the determination of the Appeal are as follows:

#### Local Plan Part 1: Core Strategy

CS2 - Housing Provision  
CS4 - Green Infrastructure, Biodiversity and Geological Conservation  
CS5 - Transport Strategy and Infrastructure  
CS6 - The Development Strategy  
CS14 - Development Outside Settlements  
CS15 - Sustainable Development and Climate Change  
CS16 - Natural Resources and Renewable Energy  
CS17 - High Quality Design  
CS18 - Provision of Affordable Housing  
CS20 - Infrastructure and Development Contributions  
CS21 - Protection and Provision of Open Space

4.4. It is agreed that policies CS2 and CS6 are out of date on account of the lack of a five year supply of deliverable housing land. It is also agreed that the weight attributable to conflicts with policies CS14 and CS22 is reduced to the extent they derive from settlement boundaries that reflect out of date housing requirements.

## Development Sites and Policies DPD

DSP2 – Environment Impact

DSP6 - New residential development outside of the defined urban settlement boundaries

DSP13 - Nature Conservation

DSP14 - Supporting Sites for Brent Geese and Waders

DSP15 - Recreational Disturbance on the Solent Special Protection Areas

DSP40 - Housing Allocations

- 4.5. It is agreed that Policy DSP6 is out of date on account of the lack of a five year supply of deliverable housing land.
- 4.6. It is agreed that the Local Plan Part 3 is not applicable to the determination of the Appeal Scheme, save for its relevance to the assessment of deliverable housing supply from Welborne.
- 4.7. Relevant policies are to be addressed in evidence.

## **Material Considerations**

### General

- 4.5. The following represent material considerations in the determination of the appeal scheme:
  1. The NPPF and the approach to the presumption in favour of sustainable development
  2. The five year housing land supply position
  3. Appeal decisions
  4. The emerging Fareham Borough Local Plan
  5. Case law
  6. Fareham Borough Council SPDs including (Affordable Housing SPD (2005) and the Planning Obligations SPD (2016)

- 4.6. It is accepted that the Council is currently unable to demonstrate a five year supply of deliverable housing land against the requirements of the SHMA, PUSH Position Statement or the standard methodology set out in the NPPF. This represents a material consideration of significant weight in the determination of the appeal.
- 4.7. As set out in the Executive Summary, it is agreed that the lack of a five year supply of deliverable housing land triggers the operation of policy DSP40 which was introduced precisely to operate as an exception to the otherwise restrictive policies of CS14 and DSP6 to permit in appropriate cases development in breach of those policies when the Council could not demonstrate a 5 year housing land supply.
- 4.9. It is agreed that the Appeal Scheme satisfies the requirements at criteria (i) to (iv) of Policy DSP40; but there remains dispute as to the acceptability of the scheme in relation to the environmental, amenity and traffic implications of criteria (v). The Council objects to the Scheme in relation to the purported environmental impacts of the scheme having regard to the failure to mitigate the likely adverse effects on the integrity of European Sites, on-site ecological matters and the loss of BMV agricultural land.
- 4.10. It is agreed that the loss of BMV agricultural land alone would not be sufficient to warrant the refusal of planning permission but remains a matter to be weighed as a harm in the overall planning balance. Notwithstanding, it is agreed that the better the quality of agricultural land being lost, the greater the weight to be afforded on the negative side of the planning balance.
- 4.11. The Council considers the development would lead to an unacceptable displacement of car parking on Beaulieu Avenue and Romsey Avenue which would be inconvenient to users of the highway and harmful to highway safety. The Appellant considers the Appeal Scheme would not unduly inconvenience users of the highway and nor would it be harmful to highway safety. Hampshire County Highways raise no highways safety and/or sustainability objection to the Scheme and an Agreed (signed and dated) Statement of Highway Matters has

been prepared between the Appellant and Hampshire County Highways. This was submitted to PINS on 11<sup>th</sup> June 2021.

- 4.12 It is also agreed that there is a significant need for affordable housing, which is a material consideration.
- 4.13 The Council and Appellant attach limited weight to the emerging Local Plan.
- 4.14. Whilst it is common ground that there is a material land supply shortfall in the five year housing land supply position, the extent of that housing land supply shortfall is not currently agreed. This matter is addressed in a separate Housing Land Supply SoCG.

**5.0 CONSIDERATION OF THE APPEAL APPLICATION BY FAREHAM BOROUGH COUNCIL**

- 5.1. The appeal is lodged against the Council's decision to refuse planning permission.
- 5.2. The position in relation to the responses received upon the application may be summarised as follows:

No Objection (subject to conditions/S106/details at reserved matters stage)	Objection
<ol style="list-style-type: none"><li>1. Environmental Health</li><li>2. Contaminated Land</li><li>3. Trees</li><li>4. HCC Countryside Access</li><li>5. HCC Highways</li><li>6. HCC Archaeology</li><li>7. HCC Childrens Services</li></ol>	<ol style="list-style-type: none"><li>1. Local Residents</li><li>2. Natural England</li><li>3. Council ecologist</li><li>4. HCC Flood &amp; Water Management team (LLFA)</li></ol>

- 5.3. As set out at Appendix A, the LLFA has since removed its holding objection and Fareham Bourgh Council is no longer pursuing Reason for Refusal (e).

## **6.0 MATTERS IN DISPUTE**

6.1. The areas of disagreement comprise as follows:

- (i) Planning policy compliance
- (ii) The extent of the shortfall in the five year housing land supply position
- (iii) The impact of the scheme upon European Sites in the Solent
- (iv) The impact on protected and priority species on-site
- (v) Highways safety and convenience

## **7.0 HEADS OF TERMS FOR LEGAL AGREEMENT**

- 7.1. It is agreed between the parties that the Appellant will provide planning obligations, in the form of an undertaking under Section 106 of the Town and Country Planning Act (1990) in favour of Fareham Borough Council and Hampshire County Council.
- 7.2. The undertaking will be intended to ensure the financial contributions and other compliant obligations to enable the proposed development to go ahead are provided in accordance Regulation 122(2) of the Community Infrastructure Levy Regulations 2020 and the content at paragraphs 54 and 55 of the NPPF.
- 7.3. The undertaking will be completed and submitted to the inquiry.

## **8.0 CONDITIONS**

- 8.1 It is agreed that there should be a schedule of conditions agreed between the parties, for discussion with the Inspector before or during the Inquiry.
- 8.2 The schedule will be compiled and submitted to the Inspector during the Inquiry.

## **9.0 CORE DOCUMENT LIST**

- 9.1 It is agreed that there should be a common list of reference documents and these are to be referenced as Core Documents to the Inquiry. The list will be compiled and a full set of the documents will be provided for the Inspector.



# APPENDIX A



www.hants.gov.uk

Enquiries to

Sarah Reghif

My reference

SWM/2018/0806

Direct Line



Your reference

P/18/1073/FP

Date

17 June 2021

Email



Dear Sir/Madam,

**Outline planning application for residential development of 225 dwellings, bird conservation area and area of public open space with all matters reserved except for access at Land To The South Of Romsey Avenue Fareham**

Hampshire County Council as Lead Local Flood Authority has provided comments in relation to the above application in our role as statutory consultee on surface water drainage for major developments.

In order to assist applicants in providing the correct information to their Local Planning Authority for planning permission, Hampshire County Council has set out the information it requires to provide a substantive response at <https://www.hants.gov.uk/landplanningandenvironment/environment/flooding/planning>

The County Council has reviewed the following documents relating to the above application:

- Updated Surface Water Drainage Technical Note dated 26/05/21

The drainage design has been updated with infiltration rates used that reflect the depth of the infiltration feature. There are now additional SuDS features provided to manage surface water flows rather than reliance on the basins and additional information has been provided in terms of levels.

Given this is an outline application, we would consider the source control calculations and outline drainage proposals to be of an acceptable standard.

Director of Economy, Transport and Environment  
Stuart Jarvis BSc DipTP FCIHT MRTPI

As such, given the additional information referenced above, we are now able to recommend conditions and request that the following information is submitted for any reserved matters application.

1. No development shall begin until a detailed surface water drainage scheme for the site, based on the principles set out within the technical note dated 26.05/21, has been submitted and approved in writing by the Local Planning Authority. The submitted details should include:
  - a. A technical summary highlighting any changes to the design from that within the approved documentation.
  - b. Infiltration test results undertaken in accordance with BRE365 and providing a representative assessment of those locations where infiltration features are proposed once further plot specific details are submitted.
  - c. Detailed drainage plans to include type, layout and dimensions of drainage features including references to link to the drainage calculations.
  - d. Detailed drainage calculations to demonstrate existing runoff rates are not exceeded and there is sufficient attenuation for storm events up to and including 1:100 + climate change.
  - e. Evidence that urban creep has been included within the calculations.
  - f. Confirmation that sufficient water quality measures have been included to satisfy the methodology in the Ciria SuDS Manual C753.
  - g. Exceedance plans demonstrating the flow paths and areas of ponding in the event of blockages or storms exceeding design criteria.
2. Details for the long term maintenance arrangements for the surface water drainage system shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of any of the dwellings. The submitted details shall include maintenance schedules for each drainage feature type and ownership.

As a statutory consultee, the County Council has a duty to respond to consultations within **21 days**. The 21 day period will not begin until we have received sufficient information to enable us to provide a meaningful response.

Please ensure all data is sent to us via the relevant Local Planning Authority.

This response has been provided using the best knowledge and information submitted as part of the planning application at the time of responding and is reliant on the accuracy of that information.

Yours faithfully,

A black rectangular redaction box covering the signature of the Flood and Water Management Team.

Flood and Water Management Team

Economy, Transport & Environment Department,  
Hampshire County Council, 1st Floor, EII Court West,  
The Castle, Winchester, Hampshire SO23 8UD

Web:

<https://www.hants.gov.uk/landplanningandenvironment/environment/flooding>

## **General guidance for the application**

*It is important to ensure that the long-term maintenance and responsibility for Sustainable Drainage Systems is agreed between the Local Planning Authority and the applicant before planning permission is granted. This should involve discussions with those adopting and/or maintaining the proposed systems, which could include the Highway Authority, Planning Authority, Parish Councils, Water Companies and private management companies.*

*For SuDS systems to be adopted by Hampshire Highways it is recommended that you visit the website at:*

<https://www.hants.gov.uk/transport/developers/constructionstandards> for guidance on which drainage features would be suitable for adoption.

*Where the proposals are connecting to an existing drainage system it is likely that the authorities responsible for maintaining those systems will have their own design requirements. These requirements will need to be reviewed and agreed as part of any surface water drainage scheme.*

## **Works in relation to ordinary watercourses**

*PLEASE NOTE: If the proposals include works to an ordinary watercourse, under the Land Drainage Act 1991, as amended by the Flood and Water Management Act 2010, prior consent from the Lead Local Flood Authority is required. **This consent is required as a separate permission to planning.***

*Information on ordinary watercourse consenting can be found at the following link*

<https://www.hants.gov.uk/landplanningandenvironment/environment/flooding/c/hangewatercourse>

*It is strongly recommended that this information is reviewed before Land Drainage consent application is made.*

*For guidance on providing the correct information, we recommend you use our **Ordinary Watercourse Consents Pre-application service** and help avoid delays occurring at the formal application stage. A Pre-application service for Ordinary Watercourse Consents is available, allowing consents to go through in a smoother, often more timely manner. For full information please visit:*

[https://www.hants.gov.uk/landplanningandenvironment/environment/flooding/c  
hangewatercourse](https://www.hants.gov.uk/landplanningandenvironment/environment/flooding/c<br/>hangewatercourse)

**Land South of Romsey Avenue, Portchester**

**PINS Ref: APP/A1720/W/21/3271412 (LPA Ref: 18/1073/FP)**

**Statement of Common Ground: Five Year Housing Land Supply**

*8<sup>th</sup> July 2021*

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**1. Introduction**

- 1.1. This Housing Land Supply (“HLS”) Statement of Common Ground (“SoCG”) has been prepared by Mr Steven Brown (of Wolf Bond Planning), on behalf of the Appellant, Foreman Homes Ltd and Richard Wright on behalf of Fareham Borough Council. It sets out both the agreed and disputed matters having regard to the five year housing land supply position.
- 1.2. This HLS SoCG identifies the requirement to be met during the five year period, the deliverability of the identified components of supply; and the subsequent five year housing land supply positions of the respective parties.

**2. The Agreed Position**

- 2.1. It is common ground that the Council is not able to demonstrate a five year supply of deliverable housing land against the minimum five year requirement for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 2.2. As such, it is common ground that the Council is not meeting paragraph 59 of the NPPF and, by virtue of footnote 7, paragraph 11(d) is engaged unless disapplied by virtue of paragraph 177.
- 2.3. The shortfall will only be rectified if planning approval is given for housing on sites not originally envisaged for housing in the adopted Local Plan Parts 1 and 2 or through plan-led development delivered through the emerging Local Plan.
- 2.4. In the circumstances, the most important, operative policy for determining the acceptability of residential development on the Site is Policy DSP40.

**3. The Housing Requirement and Five Year Period**

- 3.1. It is agreed between the parties that the five year period to be used for the purpose of calculating the five year housing land supply position for this appeal is 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 3.2. In so far as the strategic policies from the Core Strategy and Development Sites and Policies DPD are more than five years old, it is agreed, by operation of paragraph 73 and footnote 37 of the NPPF, that **the housing requirement falls to be measured against the local housing need figure calculated using the standard method.**

- 3.3. A such, the starting point to calculating the five year requirement is the minimum **539 dwelling annual requirement** derived from the application of the Standard Method. This equates to 2,695 dwellings requirement.
- 3.4. However, and as a result of the Housing Delivery Test (“HDT”) results published in February 2021, it is agreed that it is appropriate to apply a 20% buffer to the requirement.
- 3.5. This results in a minimum five year requirement of **3,234 dwellings for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.**

**4. Housing Supply**

- 4.1. The Council maintains it has a five year supply of 2,310 dwellings. This results in a shortfall of 924 dwellings and a supply of 3.57 years.
- 4.2. The Appellant identifies a supply of 600 dwellings. This results in a shortfall of 2,634 dwellings and a supply of only 0.93 years.
- 4.3. The respective positions are summarised in Table 1 below.

*Table 1: Respective Five Year Housing Supply Positions*

	<b>Fareham Borough Council</b>	<b>Appellant</b>
Minimum 5yr Req. 1 Jan 2021 to 31 Dec 2025	3,234	3,234
Deliverable Supply	2,310	600
Extent of Shortfall	-924	-2,634
No. Years Supply	3.57yrs	0.93yrs

- 4.4. The supply differences are set out in **Appendix 1** attached
- 4.5. As set out above, and on either approach, it is agreed that the Council is unable to demonstrate a five year supply of deliverable housing land.

**5. Implications of the Respective Five Year Positions**

- 5.1. The agreed position between the Council and Appellant is that the Council is not able currently to demonstrate a five year supply of deliverable housing land for the period 1st January 2021 to 31st December 2025.
- 5.2. As such, it is common ground between the Council and Appellant that the Council is not meeting paragraph 59 of the NPPF, thus engaging the presumption in favour of sustainable development at paragraph 11(d) of the NPPF unless disapplied by virtue of paragraph 177.
- 5.3. Whilst the Council and Appellant disagree as to the extent of the shortfall, it is nevertheless agreed, on either position, that the shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant. As such it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall.

- 5.4. In the light of the agreement reached between the parties in relation to the significance of the five year housing land supply shortfall, neither party will call their respective witnesses to deal with housing land supply matters unless such evidence is requested by the Inspector. This will save time and resources and will enable a more efficient inquiry process.
- 5.5. This HLS SoCG is signed and dated below.

**Signatures**

On behalf of the Appellant:



nd Planning obo Foreman

Name: Richard Wright MRTPI Fareham Borough Council

Date: 8<sup>th</sup> July 2021

\*\*\*\*\*

## Appendix 1: Site Delivery

The following table sets out the respective positions in relation to the deliverability of the components of supply.

Supply source	Revised Council <sup>1</sup>	WBP	Difference
Outstanding Planning Permissions – Small (104 dwellings) (10% discount)	69	69	0
Outstanding Full Planning Permissions – Large (5+ dwellings)	402	402	0
Outstanding Outline Planning Permissions – Large (5+ dwellings)	296	27 <sup>2</sup>	269
Resolution to Grant Planning Permission – Large (5+ dwellings) (exc Welborne)	742 <sup>3</sup>	0	742
Resolution to Grant Planning Permission – Large (5+ dwellings) (Welborne)	390	0	390
Brownfield Register Sites	276	0	276
Local Plan Adopted Housing Allocations	33	0	33
Windfall	102	102	0
<b>Total</b>	<b>2,310</b>	<b>600</b>	<b>1,710</b>

<sup>1</sup> Supplementary Statement to Newgate Lane East Appeal (3269030)

<sup>2</sup> Sites included in this category by WBP are: Egmont Nurseries, Brook Avenue (8 dwellings); 18 Titchfield Park Road, Titchfield (6 dwellings); east & west of 79 Greenaway Lane (6 Dwellings) and Burridge Lodge (7 dwellings)

<sup>3</sup> Paragraph 5.8 of the Council's Supplementary Statement for Newgate Lane East Appeal indicates that this figure should be 663.

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1, NE5 and HP4**

**and**

**Omission of Land South of Romsey  
Avenue, Fareham as an Allocation in  
Policy H1 (SHELAA Site Ref 207).**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
8. Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015)
9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Report to Planning Committee on 16<sup>th</sup> September 2020 (LPA Ref: P/18/1073/FP)
11. Decision Notice for P/18/1073/FP (21<sup>st</sup> September 2020)
12. European Protected Species Proof of Evidence for the Romsey Avenue Appeal (P Whitby) (July 2021)
13. On-Site Ecology & nature Conservation Proof of Evidence for the Romsey Avenue Appeal (A Day) (July 2021)
14. Agreed Statement of Highway Matters (SMA and Hampshire County Highways ("HCC")) for the Romsey Avenue Appeal (signed and dated June 2021).
15. Planning SoCG for the Romsey Avenue Appeal (8 July 2021)
16. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in land located to the south of Romsey Avenue, Fareham. The Site has been assessed in the SHELAA as Site Ref: 207. It was also proposed as a housing allocation for 225 dwellings under Policy HA5 of the 2017 consultation draft Local Plan.
- 1.2. As such, the Site has been promoted through earlier stages of the Local Plan process as sustainable urban extension to Fareham, an acknowledged suitable location for growth within the Borough as indicated in the SHELAA.
- 1.3. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore advocate changes to the Local Plan to address this, including the allocation of our client's land south of Romsey Avenue, Fareham.
- 1.4. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
- 1.5. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## **2. REPRESENTATIONS AND SUPPORTING INFORMATION**

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Report to Planning Committee on 16<sup>th</sup> September 2020 (LPA Ref: P/18/1073/FP) (**Appendix 10**)
- Decision Notice for P/18/1073/FP (21<sup>st</sup> September 2020) (**Appendix 11**)
- European Protected Species Proof of Evidence for the Romsey Avenue Appeal (P Whitby) (July 2021) (**Appendix 12**)
- On-Site Ecology & nature Conservation Proof of Evidence for the Romsey Avenue Appeal (A Day) (July 2021) (**Appendix 13**)
- Agreed Statement of Highway Matters (SMA and Hampshire County Highways ("HCC")) for the Romsey Avenue Appeal (signed and dated June 2021) (**Appendix 14**)

- 
- Planning SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 15**)
  - Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 16**)

2.2. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection
Omission site – Land to the South of Romsey Avenue, Fareham (SHELAA Ref 207) – failure to include as an allocation in Policy H1	Objection
Policy NE5 - Solent Wader and Brent Goose Sites	Objection

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
  
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
  
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
  
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
  
- 3.4. To address this requirement for additional homes, we contend that further land should be allocated including the land controlled by our clients south of Romsey Avenue, Fareham (SHELAA site ref 207). This site can accommodate approximately 225 dwellings (including a policy-compliant level of affordable housing) in a sustainable location.

- 3.5. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities and the allocation of land south of Romsey Avenue, Fareham can also supply homes to contribute towards to resolving this issue.
  
- 3.6. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
  
- 3.7. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, Fareham Borough has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement asset out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.
- 5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

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<sup>7</sup> (541 x 18) + 1,000

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.

5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

### **Conclusions**

- 5.33. The approach to the housing requirement and envisaged delivery as set out in Policy H1 cannot be said to be sound. This is because it fails to provide for at least 15 years post adoption together with planning for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of

Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### **Changes sought to the Development Requirements in Policy H1.**

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;
  - c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
  - d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.
- 5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.
1. That policy H1 is amended to:

- A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need (including our clients land south of Romsey Avenue, Fareham; and
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
2. That consequential amendments are made to the document to reflect these revisions.

## 6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY

### General

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>

6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.

- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Porchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.
- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021

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to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.

6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:

- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
- b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
- c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
- d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
- e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
- f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

6.10. The Inspector's conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.

6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a

substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client's omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 16**):

6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.

6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 16** is that the shortfall is much greater than purported to be the case by the Council.

6.14. The below Table provides a comparison between the housing land supply position set out in the Council's Published Report to Committee in February 2021, the Council's updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 16**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.

6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

### **Suggested Changes to Policy HP4**

6.17. Policy HP4 cannot be said to be sound in respect of the following:

- a) Not positively prepared as the policy (alongside others in the document) will fails to provide an effective solution towards maintaining a five years supply of housing,

- b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.

6.18. To address these matters of soundness, the following amendments is proposed:

- 1. That clause c is omitted from policy HP4.

## **7. OMISSION SITE: FAILURE TO IDENTIFY LAND TO THE SOUTH OF ROMSEY AVENUE AS A HOUSING ALLOCATION FOR APPROXIMATELY 225 DWELLINGS**

### **General**

- 7.1. Through the other representations submitted to the policies of the Plan, there is a need to allocate additional land for housing development. Having regard to the representations and the earlier promotion of the omission site for residential development, the evidence justifies the allocation of the site for circa 225 dwellings.
- 7.2. The Site is well related to the urban area. It is not in a strategic gap and nor is it identified as a valued landscape. Moreover, the Site affords a sustainable location in helping to meet identified housing needs.
- 7.3. The Site is currently subject to an appeal made against the decision of Fareham Borough Council to refuse an outline planning application for residential development of 225 dwellings, a Bird Conservation Area and Public Open Space, with all matters reserved expect for access (from Romsey Avenue (LPA Ref: P/18/1073/FP)).
- 7.4. The Officer Report to Planning Committee is included at **Appendix 10** and the Decision Notice is at **Appendix 11**.
- 7.5. As set out at paragraph 8.37 of the Officer Report to Committee (16 Sept 2020), (**Appendix 10**), it is accepted that the visual and landscape effects of the development could be successfully minimised by a positive design response and landscaping strategy at reserved matters stage. Moreover, there is no landscape reason for refusal. This position is reiterated at paragraph 3 in the Executive Summary to the Planning SoCG (**Appendix 15**).
- 7.6. As set out in the Decision Notice (**Appendix 11**), the Planning Application was refused for a total of 12 reasons.

- 7.7. As set out in the Council's informative accompanying the Decision Notice, matters (g) – (l) can be addressed by means of a legal agreement prepared under Section 106 of the Town & Country Planning Act 1990.
- 7.8. This leaves for reasons (a) to (f) to be addressed.
- 7.9. As set out at paragraph 5.3 of the Planning SoCG, reason (e) (surface water drainage) is no longer being pursued. Paragraph 4.10 of the Planning SoCG also confirms that reason (f) (BMV) is not sufficient on its own to warrant refusal of the Scheme.
- 7.10. Reason (d) relates to a lack of information and is not a direct allegation of harm. In so far as further information/clarification is provided in the ecological evidence prepared by Mr Adam Day, it is considered this reason has been satisfied (**Appendix 13** refers).
- 7.11. In that scenario, that would leave reasons (a), (b) and (c) as the 'live' issues between the parties.
- 7.12. Reason (a) relates to the location of the settlement boundary, which falls away with an allocation (and or by application of current Policy DPS40 (we say)).
- 7.13. Reason (b) relates to the effect of development on Brent Geese and Waders. This matter is addressed in the evidence of Mr Paul Whitby (The Ecology Co-op) as witness for Foreman Homes in relation to the current s78 Appeal, where he concludes there will be no adverse effect on the integrity of any European site as a result of effects of the development on or loss of part of a Primary Support Area for Brent geese or waders. Instead, and as My Whitby explains, the Appeal Scheme will provide enhancements for Brent geese/waders and is a benefit of the proposal (**Appendix 12** refers).
- 7.14. Reason (c) relates to displaced parking and highway safety matters.
- 7.15. This reason for refusal is addressed in the evidence prepared by Mr David Wiseman (Stuart Michael Associates), which position is supported by a signed

Agreed Statement of Highway Matters (**Appendix 14**). This reiterates that HCC as Highway Authority raise no objections to the Appeal Scheme, with HCC confirming that the site is acceptable in highway safety and sustainability terms subject to the imposition of a properly worded conditions and the appellant entering into a section 106 agreement to secure necessary mitigation measures. In this regard, the requirements at paragraph 9.2 of the Highways SoCG are addressed in the Legal Agreement.

7.16. In addition, and as set out in the officer's report to committee (**Appendix 10**), based on the consultation responses received upon the application and the Local Planning Authority's assessment of the acceptability of the Scheme in this regard, 'other' matters, it was not suggested that the scheme should be refused on highway grounds. Rather, this reason for refusal was added by members and for their reasons explained by Mr Wiseman, Fareham Borough Council's stance in the matter is not supported by the evidence, which matters he has addressed in his Highway evidence.

7.17. As set out in the Planning SoCG (signed and dated 8 July 2021) (**Appendix 15**), the matters now agreed between the Appellant and Fareham Borough Council are wide ranging and comprise as follows (unless stated, paragraph references in brackets relate to the content of the Planning SoCG):

1. It is agreed that the Appeal Site is in a sustainable location within walking and cycle distance from local services and facilities (Paragraph 2.1)
2. The Council is not able to demonstrate a five year supply of deliverable housing land. The shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant (Paragraph 3 of Executive Summary).
3. By operation of footnote 7 of the NPPF, the most important policies for the determination of the Appeal are out of date. Subject to paragraph 177 of the NPPF, this triggers the presumption in favour of sustainable development as set out at paragraph 11(d) of the NPPF (Paragraph 3 of Executive Summary (and paragraph 2.3 separate Housing Land Supply SoCG)) (**Appendix 16**).
4. Whilst the Appeal Site is located outside the settlement policy boundary, it is by complying with the terms of policy DSP40 that proposed development for housing may overcome this in principle policy constraint Paragraph 3 of Executive Summary).

5. Importantly, the Council accepts the Appeal Scheme satisfies criteria (i) to (iv) of Policy DSP40. Accordingly, the sole dispute between the parties in the context of DSP40 is in relation to part (v) with the Council's case purporting that this Scheme would have unacceptable environmental, amenity and traffic implications (Paragraph 3 of Executive Summary). These matters are addressed in evidence.
  6. The loss of BMV agricultural land alone would not be sufficient to warrant the refusal of planning permission, but remains a matter to be weighed as a harm in the overall planning balance (Paragraph 4.10).
- 7.18. Separate representations out below in response to Policy NE5 which designates the Site as a Primary Support Area for Solent Waders and Brent Geese.
- 7.19. On the basis of the evidence prepared in support of the development of the Site for housing, the site has no physical constraints, and is well-related to the existing residential development. It is in close proximity to local services and facilities such that it affords a sustainable location in helping to meet identified housing needs whilst providing for sustainable patterns of growth.
- 7.20. We therefore consider that part of the solution to addressing the identified housing shortfall is to allocate the subject site, south of Romsey Avenue, for residential development alongside consequential changes to the Policy Map.

### **Change sought to the Local Plan**

- 7.21. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **land south of Romsey Avenue, Fareham Park Road (SHELAA Ref: 207) should be identified as a housing allocation for circa 225 dwellings, with consequential amendments to settlement boundaries and the other designations, as detailed in other representations.**

## **8. POLICY NE5: SOLENT WADER AND BRENT GOOSE SITES**

### **General**

8.1. Policy NE5 designates the Site as a Primary Support Area for Solent Waders and Brent Geese.

8.2. The Solent Waders and Brent Goose Strategy (“SWBGS”) 2020 (published March 2021) was produced by the Solent Waders and Brent Goose Strategy Steering Group. As set out in the Executive Summary to the document, it is a non-statutory document presenting evidence, analysis, and recommendations to inform decisions relating to strategic planning as well as individual development proposals.

8.3. The Executive Summary states that the primary aims of the Strategy are as follows:

- to identify the network of core areas that are regularly used and are of fundamental importance to over-wintering waterfowl across the Solent;
- to maintain a network of sites through better management and protection from development and recreational pressure, and to ensure that they will be resilient to the pressures of climate change and predicted sea level rise in the future;
- to provide a strategy that will ensure that the network of important sites is protected, whilst reducing the current uncertainty over site use, in order to better inform key coastal stakeholders.

8.4. Page 8 states in relation to the environment preferred by Brent Geese and Waders as follows:

“The suitability of sites for brent geese depends on distance from the coast, the size of the grazing area, the type of grassland management, visibility and disturbance. Brent geese prefer large open sites where they have clear sightlines and short, lush grass for grazing. They use a great deal of energy travelling between feeding areas, so tend to preferentially select sites adjacent to the coast. However, brent geese are often seen to fly over some apparently suitable sites to reach others, so there are undoubtedly more subtle factors controlling the desirability of sites.”

8.5. In addition, the SWBGS categorise sites according to their assessed functionality. The categorises are as follows:



8.6. The categorisation of sites is based upon a set of results/records gathered by the Hampshire County Council Ecology Team, aided by volunteers.

8.7. This information is then used to attribute a value to a site which determines if it is valued as a Candidate Site, Low Use Site, Secondary Support Area, Primary Support Area or a Core Area.

8.8. As stated, the Site is identified in the SWBGS as a Primary Support Area (identified as forming part of Parcel F21).

8.9. A Primary Support Area is identified as the second most important site by ranking behind a 'Core Area'.

8.10. The Strategy requires the loss of such sites to be accompanied by detailed proposals for the provision of an appropriate replacement site.

8.11. Policy NE5 states that Sites which are used by Solent Waders and/or Brent Geese will be protected from adverse impacts commensurate to their status in the hierarchy of the Solent Wader and Brent Geese Network. It is added that development on Core and Primary Support Areas will only be permitted where (a) the proposal has avoided or adequately mitigated impacts on-site; or (b) Where it can be clearly demonstrated that criteria (a) is not feasible or practicable, a suitable, readily available replacement site which conforms entirely to the specific requirements for the Solent Waders and Brent Geese

species concerned and is satisfactorily agreed by the Council and other appropriate bodies is provided and secured for the lifetime of the development.

- 8.12. As Mr Whitby explains in his evidence (**Appendix 12**), the Site does not have the characteristics to support its classification in the SWBGS as a Primary Support Area and as such, there would be no adverse impact on the Site by virtue of the Scheme, including on account of the proposed Bird Conservation Area.
- 8.13. As set out at section 7, and paragraph 8.2 of Mr Whitby's evidence, the Site has been found not to act as supporting habitat for Brent Geese/Waders since 2014.
- 8.14. As set out at section 9 of Mr Whitby's evidence, reason for refusal (b) appears to have been largely based upon the objection held by Natural England with respect to the perceived adverse impact that would result in the loss of part of a Primary Support Area for brent geese and waders.
- 8.15. Part of the objection raised by Natural England is founded upon the correct principle of implementing the recommendations of the SWBGS, based upon the data provided for parcel F21. At the time of the application and subsequent consultation process, it is unfortunate that consideration of the land management of the site was not considered in assessing the real value of the site, rather than relying solely on historical records. As Mr Whitby explains at his paragraph 9.2, within the original ES produced by Ecosupport in 2018 to support the application, an erroneous data record was made, indicating that two records of 300 brent geese were identified from 2017. It is important to note that this record was an error and also that Natural England in considering this record within the ES had a false perception of the use and indeed the value of the site for brent geese.
- 8.16. Within Mr Whitby's evidence, and as set out in the ES Update (June 2021), further detail has been provided to show that the Appeal Site (Parcel F21), does not act as supporting habitat to the Solent SPA sites and historically only appears to have supported brent geese periodically. The principle for assessing

the value of a site to support wading birds and brent geese based on its habitat value is supported within the SWBGS and it is clear that the site has not been identified to support any significant numbers of brent geese since the arable management at the site changed to focus on spring cereals.

- 8.17. Mr Whitby further explains that the Bird Mitigation Reserve design as set out by Lindsay Carrington Ecological Services was designed to support at least 300 foraging brent geese.
- 8.18. Since the development of housing on part of the Site will not, alone or in combination, adversely affect the integrity of any European site through loss of foraging or roosting habitat of qualifying bird features outside the boundary of European sites, no mitigation measures are required to address this potential pathway of impact. Foreman Homes proposes a comprehensive ecological enhancement package, to be delivered in perpetuity within the redline boundary of the Appeal Site.
- 8.19. The proposed ecological enhancement is to provide, in perpetuity, a bird reserve within the southern section of the red line boundary of the Appeal Site, nearest to the closest European site.
- 8.20. The reserve will cover an area of 4.2 hectares, of which 3.7 hectares is designed for Brent geese and waders and will provide a lush improved grassland with a nitrogen rich clover and grass sward. A “scrape” will be included as a freshwater resource to enhance the habitat for Brent geese and waders. The remaining 0.5 hectares is designed to support a high diversity of bird species and provide habitat enhancements for other protected and priority species identified at the Appeal Site. This area will include three freshwater ponds, a sand martin and kingfisher nest bank, wet species-rich grassland and scrub and hedgerow planting. The entire bird reserve will be protected by a security fence and ditch to prevent human / predator access to the reserve. There will be a narrow buffer between the northern boundary of the reserve and new houses to the north. The bird reserve will be provided prior to the commencement of construction work.

- 8.21. In Mr Whitby's expert opinion, the reserve far exceeds the requirement to support very low numbers of brent geese, with only a single individual identified since 2013.
- 8.22. Mr Whitby has demonstrated, through examination of existing comparable sites in terms of size, openness and proximity to urban populations, that the bird reserve would be suitable for use by Brent geese and waders. This information is included in the Updated ES (June 2021).
- 8.23. This package amounts to an enhancement and **net gain** for biodiversity generally, including for qualifying bird species of European sites, when compared against the existing 12.25 hectares at the Appeal Site containing unsuitable habitat for Brent geese and waders.
- 8.24. Even though the enhancement package is not required for Habitat Regulations Assessment purposes, this package also puts beyond any doubt that the development will have no adverse effect alone or in combination with other plans or projects on the integrity of any European site through housing on part of the Appeal Site.
- 8.25. The bird reserve will be managed in perpetuity through an appropriate third party organisation in accordance with management, maintenance and monitoring prescriptions to be included in a Landscape Environmental Plan ("LEMP"), with funding in perpetuity to be secured via a s106 agreement.
- 8.26. The data shows that this site is not "important". However, and even were the Site to be classed as 'important' (which it is not), it has been demonstrated through Mr Whitby's evidence that there would not be any adverse impact arising from the Scheme. In addition, and as Mr Whitby explains, the Appeal Scheme actually results in a benefit in terms of the habitat to be made available to Solent Waders and Brent Geese.

- 8.27. The other part of the objection raised by Natural England was the likely significant effect of the development upon the Portsmouth Harbour SPA and SSSI, with an Appropriate Assessment recommended.
- 8.28. A Shadow HRA has now been produced that clearly sets out all of the effects and appropriate mitigation and compensation measures required to ensure that there will be no effect on the conservation objectives and the integrity of the Solent SPA sites.
- 8.29. The proposed development will be fully in accordance with Policy DSP15 (Recreational Disturbance on the Solent Special Protection Areas (SPA)) by, as above, making an appropriate financial contribution in accordance with the SRMS (and no *direct* effects on any European designated site will arise from this development).
- 8.30. As Mr Whitby explains, whilst the Site is used by Brent Geese and Waders to a limited extent, the Site does not function as a Primary Support Area. He also questions the evidence on which the designation is based. Moreover, given the BCA proposals as part of the Scheme that will create habitat to support Brent Geese and Waders, along with the proposed biodiversity net gain associated with the Scheme, it is considered that development of the Site for housing will be appropriate and will result in the creation of enhanced habitat for European Protected Species.

### **Change sought to Policy NE5**

- 8.31. The Site, comprising land to the south of Romsey Avenue should be deleted as Primary Support Area and reference to the same removed from the Proposals Map.

## **9. OVERALL CONCLUSIONS**

- 9.1. Our representations have identified a number of concerns with the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
  
- 9.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.
  
- 9.3. These matters can be addressed through Main Modifications.

## **10. FINAL REMARKS**

- 10.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 10.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations, including the allocation of our client's site south of Romsey Avenue, Fareham for approximately 225 dwellings.
- 10.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:

Mr

First Name:

Steve

Last Name:

Carrington

Job Title: (where relevant)

Organisation: (where relevant)

Foreman Homes Ltd

c/o Agent

Address:

Postcode:

Telephone Number:

Email Address:

A3 Please provide the Agent's details:

Title:

Mr

First Name:

Steven

Last Name:

Brown

Job Title: (where relevant)

Organisation: (where relevant)

Woolf Bond Planning

Address:

Postcode:

Telephone Number:

Email Address:



B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1 and HP4**

**and**

**Support of land at Rookery Avenue for  
residential and employment use.**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
8. Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015)
9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in land located at Rookery Avenue, Whiteley. The Site is allocated within the draft Fareham Local Plan for 32 dwellings and 1,800sqm employment floorspace .
- 1.2. As such, the Site has been promoted through earlier stages of the Local Plan process as sustainable urban extension to Fareham, an acknowledged suitable location for growth within the Borough as indicated in the SHELAA.
- 1.3. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore support the allocation of our client's land at Rookery Avenue, Whiteley.
- 1.4. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
- 1.5. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## **2. REPRESENTATIONS AND SUPPORTING INFORMATION**

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector’s Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector’s Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to ‘The Navigator’, off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)

2.2. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection
Land at Rookery Avenue – allocated for residential and employment use under Policy HA27	Support

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
  
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
  
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
  
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
  
- 3.4. To address this requirement for additional homes, we support the allocation (Housing Allocation Policy: HA27) of the land controlled by our clients at Rookery Avenue, Whiteley (SHELAA site ref 1168). This site can accommodate approximately 32 dwellings (including a policy-compliant level of affordable housing) in a sustainable location.

- 3.5. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities and the allocation of land at Rookery Avenue, Whiteley can also supply homes to contribute towards to resolving this issue.
- 3.6. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
- 3.7. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, FBC has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement asset out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.

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<sup>7</sup> (541 x 18) + 1,000

5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

- 5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.
- 5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

## **Conclusions**

- 5.33. The housing requirement and delivery as set out in Policy H1 cannot be said to be sound as it fails to provide for at least 15 years post adoption together with a failure to plan for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### **Changes sought to the Development Requirements in Policy H1.**

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and like Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;

- c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
- d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.

5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.

1. That policy H1 is amended to:
  - A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need (including our clients land at Rookery Avenue, Whiteley; and
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
2. That consequential amendments are made to the document to reflect these revisions.

## **6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY**

### **General**

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

- 6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.
- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Portchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.

- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
  - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
  - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
  - d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
  - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
  - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

- 6.10. The Inspector’s conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.
- 6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client’s omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 16**):
- 6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.
- 6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 16** is that the shortfall is much greater than purported to be the case by the Council.
- 6.14. The below Table provides a comparison between the housing land supply position set out in the Council’s Published Report to Committee in February 2021, the Council’s updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 16**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

- 6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.
- 6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

### **Suggested Changes to Policy HP4**

- 6.17. Policy HP4 cannot be said to be sound in respect of the following:
- a) Not positively prepared as the policy (alongside others in the document) will fail to provide an effective solution towards maintaining a five years supply of housing,
  - b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.
- 6.18. To address these matters of soundness, the following amendments is proposed:
- 1. That clause c is omitted from policy HP4.

## **7. SUPPORT THE ALLOCATION OF THE LAND AT ROOKERY AVENUE AS A HOUSING ALLOCATION FOR APPROXIMATELY 32 DWELLINGS AND 1,800SQM FLOORSPACE**

### **General**

- 7.1. Through the other representations submitted to the policies of the Plan, there is a need to allocate additional land for housing development. Having regard to the site's context, existing policies and technical analysis undertaken, the evidence justifies the allocation of the site for 32 dwellings and 1,800sqm employment floorspace.
- 7.2. The Site is well related to the urban area Whiteley. It is not in a strategic gap and nor is it identified as a valued landscape. Moreover, the Site affords a sustainable location in helping to meet identified housing needs.
- 7.3. The employment use will comprise approximately 1,800sqm of office space and a drive-in workshop, bespoke to the future occupiers' operation. CBRE have undertaken a search in the local area and have found no other sites that would satisfy the requirements of the future occupier.
- 7.4. On the basis of the evidence prepared in support of the development of the Site for housing and employment use, the site has no physical constraints, and is well-related to the existing settlement. It is in close proximity to local services and facilities such that it affords a sustainable location in helping to meet identified housing needs whilst providing for sustainable patterns of growth.
- 7.5. We therefore consider that part of the solution to addressing the identified housing shortfall is to allocate the subject site, at Rookery Avenue, Whiteley, for residential and employment development alongside consequential changes to the Policy Map.

### **Change sought to the Local Plan**

- 7.6. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **land at Rookery Avenue, Whiteley (SHELAA Ref: 1168) should be**

**identified as a housing allocation for circa 32 dwellings and 1800sqm employment floorspace, with consequential amendments to settlement boundaries and the other designations, as detailed in other representations.**

## **8. OVERALL CONCLUSIONS**

- 8.1. Our representations have identified a number of concerns as well as agreement with sections of the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
- 8.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.
- 8.3. These matters can be addressed through Main Modifications.

## **9. FINAL REMARKS**

- 9.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 9.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations.
- 9.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:

Mr

First Name:

Steve

Last Name:

Carrington

Job Title: (where relevant)

Organisation: (where relevant)

Foreman Homes Ltd

c/o Agent

Address:

Postcode:

Telephone Number:

Email Address:

A3 Please provide the Agent's details:

Title:

Mr

First Name:

Steven

Last Name:

Brown

Job Title: (where relevant)

Organisation: (where relevant)

Woolf Bond Planning

Address:

Postcode:

Telephone Number:

Email Address:

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL



The Planning Inspectorate

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# **Report to Tonbridge and Malling Borough Council**

**by Louise Crosby and Luke Fleming**

**Inspectors appointed by the Secretary of State**

**Date: 07 June 2021**

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Planning and Compulsory Purchase Act 2004  
(as amended)  
Section 20

## **Report on the Examination of the Tonbridge and Malling Borough Council Local Plan**

The Plan was submitted for examination on 23rd January 2019

The examination hearings were held between 6th and 8th October 2020

File Ref: PINS/H2265/429/8

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## **Abbreviations used in this report**

DtC	Duty to Co-operate
HMA	Housing Market Area
LPA	Local Planning Authority
MoUs	Memorandums of Understanding
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
SDC	Sevenoaks District Council
the Act	Planning and Compulsory Purchase Act 2004 (as amended)
the Plan	Tonbridge and Malling Borough Local Plan

## **Non-Technical Summary**

This report concludes that the Tonbridge and Malling Borough Local Plan (the Plan) is not legally compliant in respect of the Duty to Cooperate (DtC) and, as such, we recommend that the Plan is not adopted.

## Introduction

1. This report contains our assessment of the Tonbridge and Malling Borough Local Plan in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended) (the Act). It considers whether the Plan's preparation has complied with the duty to co-operate (DtC).
2. The revised National Planning Policy Framework (NPPF) was published in July 2018 and further revised in February 2019. It includes a transitional arrangement in paragraph 214 which indicates that, for the purpose of examining this Plan, the policies in the 2012 NPPF will apply. Similarly, where the Planning Practice Guidance (PPG) has been updated to reflect the revised NPPF, the previous versions of the PPG apply for the purposes of this examination under the transitional arrangement. Therefore, unless stated otherwise, references in this report are to the 2012 NPPF and the versions of the PPG which were extant prior to the publication of the 2018 NPPF.
3. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound Plan. The Tonbridge and Malling Borough Local Plan, submitted on 23 January 2019, is the basis for our examination. It is the same document as was published for consultation between 1 October 2018 and 19 November 2018.
4. This report considers whether the Plan's preparation has complied with the DtC. Given our conclusion in relation to the DtC, we do not go on to consider whether the Plan is sound and whether it is compliant with other legal requirements. If a local planning authority cannot demonstrate that it has complied with the DtC at the independent examination of their local plan, then Section 20(7A) of the Act requires that the examiner must recommend non-adoption of the Plan. This is the situation in this case, and it is not, therefore, relevant for us to consider the other matters in this Report. Accordingly, we have not recommended any main modifications.
5. Hearing sessions were held between 6 and 8 October 2020 and they focussed on legal compliance matters including the DtC and Sustainability Appraisal.
6. Further hearing sessions were planned as part of the examination from 3-5 November and on 10 November 2020 to consider other soundness issues. However, following our consideration of the evidence presented by Tonbridge and Malling Borough Council (the Council) and other participants in response to our Matters, Issues and Questions<sup>1</sup> at the hearing session in relation to DtC, and taking into account written representations and discussion at that hearing session we notified the Council in a letter<sup>2</sup> dated 22 October 2020, that we had

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<sup>1</sup> ED56

<sup>2</sup> ED67

significant concerns in respect of legal compliance. The letter also explained that we had asked the Programme Officer to cancel the hearings planned for November 2020 and that we would be writing to the Council as soon as possible setting out our specific thoughts in more detail. The letter also advised that we would not reach a final conclusion on the way forward for the examination until we had had a chance to consider the Council's response to that letter.

7. Our letter<sup>3</sup> to the Council, dated 15 December 2020, set out our concerns with regards to the DtC in some detail. The Council submitted a response dated 29 January 2021<sup>4</sup>, along with a number of appendices. Having fully considered the Council's response and appendices, our final letter<sup>5</sup>, to the Council, dated 2 March 2021, set out our conclusions on this matter and stated that, there were two options before the Council; either to withdraw the Plan from examination or we would write a final report recommending its non-adoption because of a failure to meet the DtC. We gave the Council 21 days to consider which option they wished to pursue. On 11 March 2021 the Council confirmed that it would not be withdrawing the Plan and invited us to prepare a final report at our earliest convenience<sup>6</sup>.

## **Assessment of Duty to Co-operate**

### **Background**

8. Section 20(5)(c) of the Act requires that we determine whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
9. Section 33A of the Act imposes a duty on a local planning authority to co-operate with other local planning authorities, the County Council and prescribed bodies or other persons by engaging constructively, actively and on an ongoing basis in relation to the preparation of a development plan document so far as relating to a strategic matter to maximise the effectiveness of the activity of plan preparation. It makes clear that sustainable development or use of land that would have a significant impact on at least two planning areas is such a strategic matter. Account can only be taken of the engagement undertaken by authorities up to the point of submission of the Plan, as the assessment of compliance with the DtC only relates to the preparation of the Plan.
10. Government policy in the 2012 NPPF paragraphs 178 to 181 sets out the importance placed on planning strategically across boundaries. Paragraph 181

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<sup>3</sup> ED68

<sup>4</sup> ED69

<sup>5</sup> ED81

<sup>6</sup> ED82

states that "local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination" and that "cooperation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development".

11. It is not disputed by the Council that housing is a strategic matter for the purposes of S33A of the Act, which required cooperation as set out above. Whether the DtC has been complied with is a matter of judgement for the examining Inspectors following consideration of the evidence presented by the Council and other participants, both in writing and at the hearing sessions.
12. Sevenoaks District Council (SDC) considers that it is unable to meet all of its own housing needs. It is a neighbouring local authority and forms a large part of the West Kent Housing Market Area (HMA) which also includes a significant part of Tonbridge and Malling Borough, as well as parts of Tunbridge Wells Borough. Our report will focus on the engagement of the Council with SDC, in relation to housing across the HMA. The NPPF (para 47) states that local planning authorities (LPAs) should use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for housing in the HMA, as far as is consistent with the policies set out in this Framework.

**Did the Council know that Sevenoaks District Council considered that it would be unable to meet its own housing needs in full, prior to the submission of their plan for examination in January 2019?**

13. The Council explained at the hearings that it was not clear until SDC's Regulation 19 (of the Town and Country Planning (Local Plan) (England) Regulations 2012 (the Regulations)) Plan was published in December 2018 what the scale of unmet need was and even then it was not certain as the Plan had not been examined by an Inspector and the housing need and requirement found sound. As set out above, the Tonbridge and Malling Regulation 19 Plan was submitted for examination on 23 January 2019 which was before the transitional deadline of 24 January 2019, set out in paragraph 214 of Annex 1 to the July 2018 and February 2019 versions of the NPPF.
14. At the hearings the Council's view was that until SDC's Plan had been consulted on there was uncertainty about whether there was any unmet need and the basis for that. Furthermore, there had not been a process of examination to demonstrate that there were unmet needs and even if there were unmet needs there was a chance that they could be quite small. However, SDC's Regulation 18 Plan which it consulted on, between July and September 2018, identified a need for 13,960 dwellings and identified sites to

meet between 6,582 and 13,382 dwellings<sup>7</sup>. So, at this stage it was clear there was a likely shortfall of at least around 600 dwellings, and this was the best case scenario. At worst it was closer to approximately 7000. While the level of unmet need and the justification for it could be a matter for debate, there is enough here to demonstrate that this was a strategic matter on which cooperation was required. In the submitted SDC Regulation 19 Plan the unmet need was in the order of 3,392 dwellings<sup>8</sup>. The calculation of housing need is not an academic exercise, it is a question of identifying an actual local need.

15. However, much earlier than this, in October 2017 when SDC were at their 'issues and options' stage of plan preparation, the Council wrote to SDC (ED78B), saying, "At this stage and based on the evidence available it is highly unlikely that there would be supportable reasons or indeed the capacity for meeting any unmet need from Sevenoaks in Tonbridge and Malling".
16. This was at a stage in the process when officers in a report to Tonbridge and Malling Council's Planning and Transportation Advisory Board (ED78A), in December 2017, advised that SDC, unlike Tonbridge and Malling Council, was not planning to release Green Belt land to meet its housing need. It also says that, even with some Green Belt releases, "the conclusion is that Sevenoaks will be a significant way adrift from meeting its identified housing needs". So, in our view, it is clear that the Council knew in 2017 that SDC would be likely to reach the judgement that it would be unable to meet its own housing needs in full, even with Green Belt release.
17. The Council's views on market capacity are informed by a Housing Delivery Study (CD HO3) which was published in September 2017. The purpose of the Study was to consider the market capacity and potential pace of housing delivery within the Borough to inform the development of the emerging Local Plan. However, paragraph 1.7 says that "emerging evidence suggests that a number of neighbouring authorities may not be able to meet in full their objectively assessed housing need. Some authorities may therefore ask TMBC whether it is able to help to address an unmet housing need arising". Paragraph 4.8 advises that "...in addition to Tonbridge and Malling's own housing needs, the Council has a Duty to Cooperate with neighbouring authorities and is likely to need through the plan-making process to consider the potential to contributing to meeting unmet housing needs from beyond the borough boundary. A core role of this study is to consider what additional housing delivery the market could potentially accommodate".

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<sup>7</sup> Page 2 of letter dated 28 October 2019, from the Inspector examining the SDC Plan

<sup>8</sup> Paragraph 14 of the Report on the Examination of SDC Plan, dated 2 March 2020

18. It is clear then that one of the motivations for the September 2017 Study was to consider the issue of unmet needs arising in a number of neighbouring authorities. Irrespective of a number of technical concerns raised by representors with regard to whether this evidence demonstrates market capacity issues or not, in our view the Housing Delivery Study is further evidence that shows that the Council knew in 2017 that SDC had or was likely to have unmet need and that they may be asked for help with meeting the need.
19. Also, it is well documented that the Council, along with SDC and Tunbridge Wells were involved in a pilot scheme (West Kent Statement of Common Ground Pilot Project), which appears to have started in 2017. This pilot scheme with the Planning Advisory Service (PAS) was set up to look at the use of Statements of Common Ground in plan making. Paragraph 6.6 of the PAS facilitator's notes, dated April 2018, says "Each of the Council's has a clear figure for its housing need, but whilst Tonbridge and Malling BC is confident that it can meet its need, Sevenoaks DC and Tunbridge Wells BC have not yet completed the work needed to determine whether or not they can meet their housing need. Thus the Councils are not yet in a position to reach agreement on the matter of housing supply". However, paragraph 6.3 of the same notes says, "This may increase the housing land supply but it remains unlikely that Sevenoaks DC will be able to meet its housing need in full". This shows that it was known then that there was likely to be some unmet need in SDC, albeit there was no firm figure.
20. In summary, it appears from the evidence before us that the Council knew for a number of years, prior to the submission of their Plan for examination, that it was highly likely that SDC would reach the judgement that it would be unable to meet its housing need in full. While the scale of the unmet need was uncertain, the overall position was clear well in advance of the submission of the Plan for examination in January 2019. It should, therefore, have been obvious to the Council that this was a strategic matter to which the DtC applied.
21. This should have led to the Council engaging constructively, actively and on an ongoing basis with SDC on unmet housing needs, regardless of whether this was a precise figure or a range, or indeed whether the Council felt it may not be able to accommodate the unmet need in full or in part. The requirement of the Act is for authorities to actively engage to maximise the effectiveness of plan preparation.

**Did the Council engage constructively, actively and on an ongoing basis with SDC on unmet housing needs?**

22. In the Council's Duty to Cooperate Statement (CD SC1), section 8 deals with Cross-Boundary Issues. The table in paragraph 8.1 of this document sets out the strategic cross boundary issues, the key neighbouring authorities/organisations in relation to each issue and the summary of cooperation. Under the housing section of this table the key neighbouring authorities/organisations are listed as Maidstone Borough Council, Ashford Borough Council, Kent County Council and Highways England. It seems that the limited extent of this table is because it only covers authorities where cross boundary issues are specifically covered in the Plan. Nowhere in this document, which is dated January 2019, and therefore postdates the publication of the SDC Regulation 19 Plan on 18 December 2018, is there any mention of unmet housing need in SDC. If there had been any constructive, active and ongoing engagement with SDC ahead of submission on what was clearly a strategic matter, it would be reasonable to expect that this would at least be mentioned in the Council's DtC statement.
23. As set out above, it was apparent from as early as October 2017 there were clear signs that SDC was likely to conclude that it would not be able to meet its housing needs in full. It seems that regular meetings were held between the Council and SDC during the preparation of the Council's Plan, but there is no evidence that unmet housing need in SDC was discussed at these meetings and no meeting minutes have been provided to evidence that housing needs were discussed. The Council say that the discussion was predominantly about 'constraints' to meeting housing needs but no minutes of any of these meetings have been produced as evidence of what was actually discussed. Consequently, there is no evidence before us, that these meetings were used for constructive and active engagement in an attempt to resolve the strategic matter of unmet housing need and maximise the effectiveness of plan preparation.
24. The Council argue that SDC did not formally ask them for help and it was not up to the Council to "make the running", but this is a circular argument with a risk that both parties defer the issue to the other without any meaningful attempt to resolve it. We are obliged to consider whether the Council cooperated and the question of whether or not SDC made any running does not remove the obligation on the Council, particularly as the issue of unmet housing need in Sevenoaks appeared to be well known to both. Moreover, it is clear from the Council's letter sent to SDC in October 2017, where they say "At this stage and based on the evidence available it is highly unlikely that there would be supportable reasons or indeed the capacity for meeting any unmet need from Sevenoaks in Tonbridge and Malling", that such a request would have been likely to be pointless. The letter was therefore a

discouragement to constructive, active and ongoing engagement, because it can reasonably be read as closing the door to cooperation. Indeed, there does not appear to have been much engagement for the next 15 months or so, up to the submission of the Plan for examination. In fact, very little evidence of any meaningful engagement in relation to this particular strategic matter has been submitted for us to take into account.

25. The Council explained at the hearings that, if they had delayed the submission of the Plan to try to accommodate some of the unmet need from SDC, once the SDC Regulation 19 Plan was published in December 2018, they would have had to effectively start plan preparation again. This is because they would have missed the transitional deadline in NPPF paragraph 214 and their housing need would have increased by around 3000 dwellings, due to the introduction of the standard method in the 2018 and 2019 versions of the NPPF<sup>9</sup> and related PPG. Whilst this may have been so, it is not an adequate or legally compliant reason to not engage. Early engagement in 2017, when there was first evidence that SDC were unlikely to be able to meet their housing need, would not necessarily have caused delays to the overall process and to the Council meeting the transitional deadline<sup>10</sup>. Furthermore, the decision to push ahead to submit on or before the 24 January 2019 was entirely a choice made by the Council. Importantly, even if no agreement had been reached on the matter, if constructive, active and ongoing engagement had taken place from the earliest stages of preparation of the Plan, the Plan would have been found legally compliant in relation to the DtC.
26. The conclusion of the SDC Regulation 18 consultation, in September 2018, was some four months prior to the submission of the Plan for examination. At this point the unmet need was still a range and would only be confirmed on conclusion of the Sevenoaks examination. This is something the Council argue is necessary before active and constructive engagement can commence, but we strongly disagree. It should have been clear at this time (i.e. four months prior to submission of the Plan), if not earlier, that there was a strategic matter relating to unmet housing need which required addressing through constructive engagement, regardless of the lack of clarity at the time over the precise volume of unmet need.
27. Whilst it was not clear in 2017, or even later in the process, at the Regulation 18 consultation stage, what the exact level of unmet need was or would be, the fact that SDC considered there was likely to be some unmet need should have led to constructive, active and ongoing engagement between the Council and SDC at that point and subsequently.

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<sup>9</sup> NPPF 2019 Paragraph 60

<sup>10</sup> NPPF 2019 Annex 1, paragraph 214

28. The Council advise that, like SDC, they have large amounts of Green Belt land, which is a constraint to meeting housing needs other than their own. Both authorities have significant areas of Green Belt as well as land in Areas of Outstanding Natural Beauty (AONB). The Council carried out a Green Belt review of land in their own administrative boundary, leading to the release of some Green Belt land in the Plan as well as a proposal to put some land into the Green Belt.
29. However, there is no evidence that at any time the Council cooperated or even considered cooperating with SDC on a joint review of the Green Belt across both of their boundaries to understand the comparative quality across the two authority areas and any potential to amend Green Belt boundaries to fully or more fully meet needs. Nor was there any joint work to assess and reach an agreement on the housing capacity on non Green Belt areas across both authorities or on how that capacity might reasonably be maximised. The Council say the reason for this is that the two LPAs were at different stages of plan making, however the plans were submitted for examination within months of each other. In addition, the fact that the Council disagreed with SDC on the approach they were taking to Green Belt release did not mean the DtC did not apply and could be ignored.
30. In terms of the Council's position about relative timescales, the Council's Regulation 19 Plan was published for consultation on 1 October 2018, around 3 weeks after the conclusion of the SDC Regulation 18 consultation. SDC published their Regulation 19 Plan for consultation on 18 December 2018 and so the fact is the plan-making timescales and processes in Tonbridge and Malling and SDC were actually closely aligned. We can find no credible reason why the Councils could not have engaged constructively and actively during the plan making process in accordance with the duty on them to engage constructively with each other in a meaningful attempt to resolve issues relating to unmet needs.
31. Whilst resolution to the problem of unmet housing needs is not a prerequisite to the Council being able to demonstrate compliance with the DtC, earlier, constructive, active and ongoing engagement, in line with the Act and national policy as articulated in the Framework and PPG, would have been much more likely to result in an effective strategy for meeting SDC's need, whether within the SDC area or elsewhere. Even if in this case the Council considered it unrealistic to contemplate a joint local plan at this point, it might have considered other less formal mechanisms of compliance with the duty, such as aligning plan time-tables and policies and/or joint approaches to plan-making. Any steps of that kind would have demonstrated positive proactive attempts at cooperation.

32. The Council's hearing statement<sup>11</sup>, submitted to SDC's examination, explains the Council's view that it would be unreasonable to expect it to accommodate any unmet housing need for SDC because it faces similar constraints and challenges, is planning to meet its own need in full, and market and infrastructure capacity mean any such external need could not be accommodated. In the circumstances, these could have all been valid issues for discussion and engagement between both authorities, but there is no evidence to indicate that they were actually the subject of any constructive engagement between the authorities.
33. The Council advise that once the actual SDC unmet need is examined and established, they would potentially seek to deal with it through a future review of the Plan. However, such an approach is not in the spirit of the Act or of national policy. The identified need for housing exists now, and the likely existence of unmet need has been known about for some time and is therefore a strategic matter that should have been considered through the DtC in the current round of local plans, not delayed to some future date. Deferring the issue to subsequent plans does not amount to constructive, active engagement, especially when the plan making processes were, in reality, closely aligned.
34. Memorandums of Understanding (MoU) were signed after the submission of both plans and provide no evidence of constructive and active engagement prior to the submission of the Plan and are therefore of no help in demonstrating the DtC has been met. Indeed, the short final MoU simply states, *'TMBC's evidence of meeting the Duty is set out in the Duty to Cooperate Statement (January 2019). The strategic cross-boundary matters and how the Duty was addressed are summarised in section 8 of the DtC Statement. The details are set out in sections 9 to 16. The record of engagement is documented in Appendix A'*. As set out above, the Statement provides no reference to the unmet housing need in SDC. Appendix A is a list of meetings that took place between April 2012 and January 2019 with various organisations, but no minutes have been provided from any of these meetings to show that unmet housing need in SDC was discussed, and moreover from careful consideration of the verbal evidence given by the Council at the hearing sessions, it would seem that it was not discussed at any of the meetings. The only discussion was about the constraints all of the Council's in the HMA were facing in meeting their housing need. Simply discussing constraints does not in itself amount to cooperation.
35. This shortcoming is surprising given that the Council were involved in the pilot scheme (West Kent Statement of Common Ground Pilot Project) with PAS looking at the use of Statements of Common Ground in plan making. Indeed,

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<sup>11</sup> Paragraph 13.19 of Tonbridge & Malling Borough Council Position Statement (ED58)

as part of this project, the Council, SDC, and Tunbridge Wells Borough Council all agreed in April 2018 that the need to address the matter of unmet housing need was the most significant issue to be addressed in any Statement of Common Ground<sup>12</sup>. This also shows that by April 2018 the Council and SDC had acknowledged that it remained unlikely SDC would be able to meet its housing need in full<sup>13</sup> and despite this, there is no evidence of cross boundary working with SDC and others as a way of seeking to ensure that housing needs were met in full across the HMA. Moreover, the NPPF at paragraph 181 provides advice to LPAs on how to demonstrate evidence of effective cooperation in relation to cross-boundary impacts. This suggests the use of, among other things, memorandums of understanding. It adds that 'cooperation should be a continuous process of engagement from initial thinking through to implementation...'. There is no evidence that this approach was followed.

36. Despite knowing that, as early as 2017, SDC was indicating it would be likely to have unmet housing need, it is reasonable for us to conclude on the basis of everything that we have considered that the Council failed to engage constructively, actively and on an ongoing basis with SDC on that strategic matter. An active process of ongoing, active and constructive engagement might or might not have led to a more positive outcome despite the constraints of market capacity, infrastructure capacity, Green Belt and AONB designations. However, what is certain is that, if parties choose not to engage with each other, there will be little prospect of difficult but important cross-border issues being resolved in relevant strategic matters. If there is no cooperation on such matters, then the effectiveness of plan preparation is unlikely to be maximised.

**If a plan is found to have failed the DtC, is it possible to proceed with the Examination?**

37. In a letter to the Planning Inspectorate, dated 18 June 2019, the Secretary of State stressed to Inspectors the importance of being pragmatic in getting a plan in place that, in line with paragraph 35 of the 2019 NPPF, represents a sound plan for the authority.
38. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This 2015 letter also stresses the importance of Inspectors working in a pragmatic way with councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within 5 years of adoption, giving councils the option to undertake

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<sup>12</sup> Sevenoaks District Council v Secretary of State for Housing Communities and Local Government [2020] EWHC 3054 (Admin)

<sup>13</sup> ED69A, Appendix D, paragraph 6.3

further work to address shortcomings identified at examination and highlighting significant issues to councils very early on and giving councils the full opportunity to address issues. However, the failure we have identified cannot be remedied during the examination since any failure in DtC cannot be resolved after submission of the Plan because the duty relates to the period of plan preparation which has ended. Once we had considered all of the evidence pertaining to DtC presented in writing and orally at the hearing sessions we immediately notified the Council of our concerns and cancelled the future hearings. We gave the Council opportunities, prior to the hearing sessions, during the hearing sessions and afterwards, to provide additional evidence confirming its approach to complying with the DtC undertaken prior to the submission of the Plan for examination.

39. In examining the Plan we have had this advice in the forefront of our minds and we have worked in a pragmatic way with the Council towards achieving a sound plan as far as practicable. However, we have identified a failure of legal compliance in relation to the DtC.
40. It is reasonable for us to conclude that the DtC, as set out in section 33A of the Act, has not been met.

## **Overall Conclusion and Recommendation**

41. The DtC in Section 33A of the 2004 Act has not been met for the reasons set out above and we, therefore, recommend that the Plan is not adopted.

*Louise Crosby and Luke Fleming*

Inspectors



The Planning Inspectorate

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# **Report to Sevenoaks District Council**

**by Karen L Baker DipTP MA DipMP MRTPI**

**an Inspector appointed by the Secretary of State**

**Date 2 March 2020**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Sevenoaks District Local Plan**

The Plan was submitted for Examination on 30 April 2019.

The Examination Hearings were held between 24 and 26 September 2019 and between 1 and 3 October 2019.

File Ref: PINS/G2245/429/7

## **Abbreviations used in this Report**

DtC	Duty to Co-operate
HMA	Housing Market Area
HPS	Hearing Position Statement
IPe	Intelligent Plans and Examinations
the Plan	Sevenoaks District Local Plan
MHCLG	Ministry of Housing, Communities and Local Government
MM	Main Modification
NPPF	National Planning Policy Framework
OAN	Objectively Assessed Need
PAS	Planning Advisory Service
PPG	Planning Practice Guidance
SoCG	Statement of Common Ground
SHMA	Strategic Housing Market Assessment

## **Non-Technical Summary**

This Report concludes that the Sevenoaks District Local Plan (the Plan) is not legally compliant in respect of the Duty to Co-operate (DtC) and, as such, I recommend that the Plan is not adopted.

## Introduction

1. This Report contains my assessment of the Sevenoaks District Local Plan (the Plan) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). The National Planning Policy Framework (NPPF) 2019 makes it clear in paragraph 35 that local plans are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. It goes on to say that in order to be sound, a local plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the Examination is the assumption that the local planning authority has submitted what it considers to be a legally compliant and sound plan. The Sevenoaks District Local Plan Proposed Submission Version<sup>1</sup>, dated December 2018 and submitted on 30 April 2019, is the basis for my Examination. It is the same document as was published for consultation between 18 December 2018 and 3 February 2019.
3. This Report considers whether the Local Plan's preparation has complied with the Duty to Co-operate (DtC). Given my conclusions in respect of the DtC, I do not go on to consider whether the Plan is sound and whether it is compliant with the other legal requirements. If a local planning authority cannot demonstrate that it has complied with the Duty at the independent Examination of their Local Plan, then Section 20(7A) of the Act requires that the Examiner must recommend non-adoption of the local plan. This is the situation in this case, and it is not, therefore, necessary for me to consider the other matters further in this Report.
4. Hearing sessions were held between 24 and 26 September 2019 and between 1 and 3 October 2019. These focussed on legal compliance matters, including the DtC, and matters of soundness in relation to the Local Plan Strategy, Green Belt, Housing Need, Housing Requirement, Housing Distribution and Housing Supply, along with the Sustainability Appraisal.
5. Further Hearing sessions were planned as part of this Examination between 5 and 7 November 2019 and between 12 and 14 November 2019 to consider other soundness matters including: individual housing allocations; Gypsy and Traveller provision and allocations; employment need, requirement, distribution and supply; individual employment allocations; transport and infrastructure; the historic environment; open space, recreation and community facilities; the natural environment and biodiversity; climate change, flooding and water management; and, health, well-being and air quality. However, following my consideration of the evidence presented by the Council and other participants in response to my Matters, Issues and Questions<sup>2</sup> at the Hearing sessions during the first two weeks, and taking into account the written representations and discussion at those Hearing sessions, I had significant concerns in respect of legal compliance, namely the DtC, and soundness.

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<sup>1</sup> SDC001

<sup>2</sup> ED8

6. Following the first two weeks of Hearing sessions, I notified the Council in my letter<sup>3</sup>, dated 14 October 2019, that I had significant concerns about a number of aspects of the Plan, both in terms of legal compliance and soundness. This letter also stated that, given these concerns, I had asked the Programme Officer to cancel the further Hearing sessions planned for November and that I was preparing a letter setting out my thoughts in more detail which would be with the Council shortly afterwards. It also confirmed that I would not reach any final conclusions on the way forward for the Examination until I had had the opportunity to consider the Council's response to that letter.
7. Although I had concerns regarding soundness, these were issues which I would have needed to explore further, it is the failure to comply with the legal DtC which necessitated a halt to the Examination proceedings. Any failure in the DtC cannot be rectified once the Plan has been submitted for Examination because the DtC applies specifically to Plan preparation, and Plan preparation ends when the Plan is submitted for Examination.
8. My letter<sup>4</sup> to the Council, dated 28 October 2019, set out my concerns with regards to the DtC in some detail. The Council submitted responses<sup>5</sup> to this and to my earlier letter, along with a number of appendices. I replied<sup>6</sup> on 19 November 2019 to say that I would be responding after the pre-Election period, in line with the Planning Inspectorate's published position in this regard.
9. Having fully considered the Council's responses and appendices, my final letter<sup>7</sup> to the Council, dated 13 December 2019, set out my conclusions on this matter and stated that, unless the Council confirmed that it intended to withdraw the Plan from Examination, the only course of action open to me would be to prepare a Report concluding that the Plan is not legally compliant in respect of the DtC and recommending that it should not be adopted. In its letter<sup>8</sup>, dated 3 January 2020, the Council confirmed that it would not be withdrawing the Plan from Examination and asked that I issue my Report as soon as possible.

### **Main Modifications**

10. I have found a failure in respect of the DtC and, as such, I have no option but to recommend that the Plan should not be adopted. Accordingly, I have not concluded on any other matters in connection with the Plan and, as a result, I would not be able to recommend any Main Modifications [MMs].

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<sup>3</sup> ED37

<sup>4</sup> ED40

<sup>5</sup> ED38, ED38A, ED41, ED42, ED42A, ED42B and ED42C

<sup>6</sup> ED43

<sup>7</sup> ED44

<sup>8</sup> ED45

## Assessment of Duty to Co-operate

### ***Has the Council demonstrated that it has engaged constructively, actively and on an on-going basis in the preparation of the Local Plan?***

11. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by Section 33A in respect of the Plan's preparation.
12. Section 33A requires that a local planning authority co-operates with other local planning authorities, the County Council and prescribed bodies or other persons in relation to the preparation of the Plan. This duty requires the Council to engage constructively, actively and on an on-going basis in the preparation of the Plan, so far as it relates to a strategic matter. A strategic matter includes the sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas.
13. Government policy, set out in paragraph 26 of the NPPF, says that effective and ongoing joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. It goes on to say that, in particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere. Co-operation is, therefore, about maximising the effectiveness of plan preparation.
14. The Plan, as submitted, identifies a need for 13,960 dwellings between 2015 and 2035, but sets out a requirement for 10,568 dwellings, which would amount to an unmet need of 3,392 dwellings. The Council advanced a position<sup>9</sup> during the Examination which sought to reduce the unmet need. However, it would still have left an unmet need of 1,316 dwellings, even if I had agreed with the Council's position.
15. It is common ground between the Council and most parties to the Examination that housing is a strategic matter upon which the Council should engage constructively, actively and on an on-going basis with its neighbours. I concur with this view. The Council published a DtC Statement<sup>10</sup> in May 2019, following the submission of the Plan for Examination, which sets out the activities undertaken by the Council, including meetings with neighbouring authorities, at both Officer and Member level, and the production of a joint evidence base with neighbouring authorities in the West Kent Housing Market Area<sup>11</sup> [HMA].

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<sup>9</sup> Housing Supply Update Paper – C2 Update [ED23]

<sup>10</sup> SUP006 and SUP006a-d

<sup>11</sup> The West Kent Housing Market Area includes Sevenoaks District Council, Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council.

16. Whether the DtC has been complied with is a matter of judgement for the examining Inspector following consideration of the evidence presented by the Council and other participants, both in writing and at the Hearing sessions.
17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment<sup>12</sup> (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area<sup>13</sup> (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.
18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement<sup>14</sup> and Appendices<sup>15</sup> and in Appendix 1: Schedule A<sup>16</sup> attached to its letter<sup>17</sup>, dated 18 November 2019, with the minutes of most of these meetings<sup>18</sup> provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group<sup>19</sup> and the West Kent Statement of Common Ground (SoCG) Pilot Programme group<sup>20</sup>.
19. The minutes<sup>21</sup> of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues

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<sup>12</sup> Sevenoaks and Tunbridge Wells Strategic Housing Market Assessment, prepared by GL Hearn Limited, September 2015 [HOU001]

<sup>13</sup> The West Kent HMA includes Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council

<sup>14</sup> SUP006

<sup>15</sup> SUP006a, SUP006b, SUP006c and SUP006d

<sup>16</sup> ED42A

<sup>17</sup> ED42

<sup>18</sup> No minutes have been provided of the meetings held on 6 December 2017, 22 January 2018 and 14 March 2018, although summaries of the meetings on 22 January 2018 and 14 March 2018 are provided in the West Kent Statement of Common Ground (SoCG) Pilot Project Facilitator's Note, dated 3 April 2018 (updated by the amended version of this note dated 10 April 2018 and submitted by the Council as part of its Appendix 3: Duty to Co-operate Appendices [ED42C]).

<sup>19</sup> This group is made up of the three West Kent Housing Market Area (HMA) authorities, namely Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council.

<sup>20</sup> This group, facilitated by the Planning Advisory Service (PAS), also included the West Kent HMA authorities.

<sup>21</sup> Pages 172-174 of SUP006a

and Options (Regulation 18), do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary<sup>22</sup> of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPe), held on 22 January 2018, set out in the Facilitator's Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

20. The notes<sup>23</sup> of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks 'is testing options to assess the way forward'. The summary<sup>24</sup> of the meeting, held on 14 March 2018, set out in the Facilitator's Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated. The Facilitator's Note<sup>25</sup> does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say<sup>26</sup> that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.
21. The Council has since stated, in Appendix 1: Schedule A<sup>27</sup> to its letter<sup>28</sup>, dated 18 November 2019, that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect, as it referred to Sevenoaks District Council planning to meet its OAN in full. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note<sup>29</sup>, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are

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<sup>22</sup> Page 185 of SUP006a

<sup>23</sup> Pages 182-183 of SUP006a

<sup>24</sup> Page 185 of SUP006a

<sup>25</sup> Paragraphs 5.1 and 5.2

<sup>26</sup> Paragraph 6.1

<sup>27</sup> ED42A

<sup>28</sup> ED42

<sup>29</sup> West Kent SoCG Pilot Project Facilitator's Note, dated 10 April 2018, set out in 2a of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that 'the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue'. Paragraph 6.6 concludes that, 'each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need. Thus, the Councils are not yet in a position to reach agreement on the matter of housing supply'. As such, it is apparent that, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.
23. The minutes<sup>30</sup> of the West Kent Dtc meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the Dtc meetings refer to addressing the unmet need in Sevenoaks is at the Dtc meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted<sup>31</sup> that 'officers discussed the potential requirement for a follow up letter<sup>32</sup> to request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.
24. Although the Dtc statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.
25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have

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<sup>30</sup> Pages 191-192 of SUP006a

<sup>31</sup> Page 194 of SUP006a

<sup>32</sup> Letters were sent to neighbouring authorities requesting that they assist with Sevenoaks' unmet housing need in April 2019.

not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>33</sup> within the HMA.

26. In paragraph 13.2 of its HPS, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers 'did not receive any formal requests to address unmet housing need' from Sevenoaks District Council.
27. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.
28. In paragraph 1.04 of its HPS, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.
29. I appreciate that these neighbouring authorities say<sup>34</sup> that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does

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<sup>33</sup> Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council

<sup>34</sup> Letters dated 21 and 27 November 2019 set out in 3a and 3b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.

*Statements of Common Ground*

30. In order to demonstrate effective and ongoing joint working, paragraph 27 of the NPPF says that strategic policy-making authorities should prepare and maintain one or more Statements of Common Ground (SoCGs), documenting the cross-boundary matters being addressed and progress in co-operating to address these. These should be produced using the approach set out in national planning guidance and be made publicly available throughout the plan-making process to provide transparency.
31. The Council has submitted a number of SoCGs<sup>35</sup> as supporting documents, some of which were provided following the submission of the Plan for Examination, on 30 April 2019. These include several SoCGs with neighbouring authorities, including Tunbridge Wells Borough Council<sup>36</sup> and Tonbridge and Malling Borough Council<sup>37</sup>, which were signed on 21 and 30 May 2019 respectively. The agreed actions within these documents in respect of housing are to 'engage through the wider DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London's growth, large scale developments and opportunities for meeting any unmet need' and to 'undertake a 5 year review of the Local Plan'; and, 'to engage through the wider DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to strategic housing matters' respectively.
32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email<sup>38</sup> to MHCLG, dated 15 March 2019, the Council says that it 'is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.' However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They imply that these matters will be dealt with in any review of the Plan. However, the Duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination.
33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.
34. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents engagement in relation to a solution in the future, not the submitted Plan. At the DtC Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders'

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<sup>35</sup> SUP007a – SUP007i

<sup>36</sup> SUP007h

<sup>37</sup> ED6

<sup>38</sup> Email from James Gleave, dated 15 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan.

*The timing of engagement*

35. The Council refers to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. The Council says, in its letter<sup>39</sup> dated 18 November 2019, that it 'could have gone back to neighbours at this point', but decided not to, as it was felt that, as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated, 'it was therefore extremely unlikely that a higher unmet need would be met elsewhere'. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.
36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that 'all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other' at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that 'at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.' However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.
37. The full extent of unmet need only became apparent to the Council following the consideration of the responses to the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs. This would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage. However, there is no evidence to show that this occurred. Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have

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<sup>39</sup> ED42

been able to accommodate some of Sevenoaks' unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.
39. It is noted that neighbouring authorities have not indicated any willingness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks' housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need.

#### *Peer Review*

40. The peer review process undertaken by the Council consisted of advice<sup>40</sup> from Intelligent Plans and Examinations (IPE) in November 2018; a PINS' Advisory Visit<sup>41</sup> in February 2019; MHCLG advice<sup>42</sup>; and, a review of the Plan and PAS Workshop<sup>43</sup> on 24 April 2019.
41. The advice from IPE following its meeting with the Council on 1 November 2018, considered several matters, including housing need and delivery, however, it made no mention of the extent of unmet housing need in the District, or how this could be addressed. The purpose of the PAS Workshop, which was held six days before the Plan was submitted for Examination and led by IPE, was 'to provide advice on the implications of the DtC for the soundness assessment of the Plan' and 'to meet with neighbouring authorities,

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<sup>40</sup> Revised Note in respect of the preparation of the Sevenoaks Local Plan, prepared by Laura Graham of IPE, dated 4 December 2018, set out in 1a of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>41</sup> PINS Advisory Visit Note, prepared by Inspector Jonathan Bore, dated 6 February 2019, set out in 1b of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>42</sup> MHCLG correspondence, meeting 6 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>43</sup> Note on the Duty to Co-operate and the Local Plan, prepared by IPE, dated 7 May 2019, set out in 1d of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

so they could outline their respective positions regarding meeting development needs in West Kent.'

42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings<sup>44</sup> in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan<sup>45</sup>, prepared by IPe, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement<sup>46</sup>. This note concludes that 'none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working'.
43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, the PAS Workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.
44. The Council says that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, several points were raised in relation to the DtC at the Advisory Visit<sup>47</sup> carried out by the Planning Inspectorate in February 2019, as set out in the note<sup>48</sup> of this meeting.
45. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet need and that it could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

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<sup>44</sup> This revised figure took account of proposed changes to the Plan period being put forward by the Council for consideration during the Examination.

<sup>45</sup> ED42B

<sup>46</sup> SUP006, SUP006a, SUP006b, SUP006c and SUP006d

<sup>47</sup> The Planning Inspectorate carries out Advisory Visits to local planning authorities ahead of submission to provide advice on procedures and to help them achieve a sound plan.

<sup>48</sup> The PINS Advisory Visit Meeting Note is set out in 1b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C].

46. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS Workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the DtC Statement was not submitted until May 2019. Nor would it have had the benefit of the time available to an Inspector for the examination of that detailed and complex evidence or the discussion at the Hearing sessions.
47. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement<sup>49</sup> in May 2019, in which it states that 'KH<sup>50</sup> advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPe<sup>51</sup>, submitted in November 2019, does not state that the DtC has been met or that KH advised that this was the case.
48. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective.

*If a Plan is found to have failed the Duty to Co-operate, is it possible to proceed with the Examination?*

49. The Secretary of State wrote to the Planning Inspectorate, on 18 June 2019, in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority.
50. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also stresses the importance of Inspectors working in a pragmatic way with Councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.
51. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to

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<sup>49</sup> SUP006d

<sup>50</sup> KH was Keith Holland of IPe, working on behalf of PAS.

<sup>51</sup> ED42B

proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.
53. For the reasons set out above the DtC set out in Section 33A has not been complied with.

## **Overall Conclusion and Recommendation**

54. The DtC in Section 33A of the 2004 Act has not been complied with for the reasons set out above and I, therefore, recommend that the Local Plan is not adopted.

*Karen L Baker*

Inspector



Neutral Citation Number: [2020] EWHC 3054 (Admin)

Case No: CO/1417/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13/11/2020

**Before :**

**MR JUSTICE DOVE**

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**Between :**

**Sevenoaks District Court**  
**- and -**  
**Secretary of State for Housing Communities and**  
**Local Government**

**Claimant**

**Defendant**

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**Ms Saira Kabir Sheikh QC and Charles Merrett (instructed by Sharpe Pritchard) for the**  
**Claimant**  
**Richard Moules (instructed by GLD) for the Defendant**

Hearing dates: Thursday 3rd September 2020  
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**Approved Judgment**

## **Mr Justice Dove :**

### Introduction

1. The claimant is a local planning authority who prepared the Sevenoaks District Local Plan (“the SDLP”) for its administrative area. The claimant challenges the decision of the Inspector appointed by the defendant to undertake the examination of the SDLP who concluded that the claimant had failed to comply with the duty to cooperate set out in section 33A of the Planning and Compulsory Purchase Act 2004. The claim is advanced by the claimant on four grounds. The first ground is that the Inspector erred in law in failing to apply a margin of appreciation when considering the test under section 33A of the 2004 Act. Ground 2 is the contention that the Inspector failed to correctly interpret and apply the duty to cooperate, and in reality conflated that duty with the requirement that a plan be sound. Ground 3 is that the Inspector failed to have regard to material considerations and in particular to consider the material evidence that was placed before her. Finally, Ground 4 is a challenge based on the contention that the Inspector’s reasons were inadequate.
2. This judgment will firstly set out the facts in relation to the case, secondly, rehearse the relevant legal framework and, thirdly, deal with the submissions advanced and the conclusions reached in relation to the four grounds on which this application is advanced.

### The facts

3. The claimant’s administrative area contains a significant element of Green Belt as well as areas which are designated as an Area of Outstanding Natural Beauty. Its district forms part of the West Kent Housing Market Area (the “HMA”) and has further functional and economic relationships with London boroughs to the north of its administrative area.
4. The claimant began the preparation of its proposed SDLP in 2015 and at that time the evidence for it started to be collected. In September 2015 a Joint Strategic Housing Market Assessment (“SHMA”) was published, having been prepared jointly for the HMA by the claimant together with the other local planning authorities in the HMA: Tunbridge Wells and Tonbridge and Malling Borough Councils. Other technical work in relation to the assessment of the Green Belt and provision for gypsies and travellers was prepared by the claimant. The claimant undertook two rounds of consultation under the provisions of Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012, the first in relation to issues and options in August 2017, and then a further consultation on the draft SDLP from July through to September 2018. In a witness statement before the court to explain the factual background to the preparation of the SDLP, James Gleave, who is the Strategic Planning Manager for the claimant, explains that at the Regulation 18 stage of plan preparation the extent of any unmet housing need as a result of the SDLP’s proposals was unknown “because views were still being gathered on what the Plan ought to contain and the council’s ‘call for sites’ process remained open until October 2018”. Thus, Mr Gleave observes, that it was not clear what proportion of unmet housing need might arise in the claimant’s district.

5. Between 8 December 2018 and 3 February 2019 the claimant undertook the consultation required by Regulation 19 of the 2012 Regulations on the SDLP in its proposed submission version. The proposed submission version identified that based upon the defendant's standard methodology the annualised housing need for the claimant's district was 698 dwellings, giving rise to a total of 13,960 dwellings over the 20-year plan period from 2015 to 2035. The housing land supply which was proposed in the SDLP was 10,568 dwellings or approximately 75% of the total housing need derived pursuant to the standard methodology. The plan was submitted for examination on the 30 April 2019.
6. For the purposes of the examination the claimant prepared a Duty to Cooperate Statement ("the Statement") setting out its case and the evidence in support of the conclusion that the duty to cooperate had been satisfied in the preparation of the SDLP. The Statement presents the evidence in a number of themes. Firstly, it alludes to the preparation of a joint evidence base, referring to the SHMA set out above and other studies and plans which were jointly prepared with relevant authorities. Secondly, the Statement refers to discussions which had occurred with a wide variety of statutory bodies ranging from Natural England and the Environment Agency to Highways England and Network Rail. The Statement then turns to discussions with neighbouring authorities. Reference is made to the Kent Planning Officer's Group as a forum (complemented by the Kent Planning Policy Forum) which meet regularly to discuss common issues in relation to plan making and allied concerns. Annexed to the statement are the notes of meetings with other public bodies, and in particular neighbouring authorities, which had occurred since the outset of preparation of the SDLP in 2015. The statement then records the statements of common ground which had been signed with a wide variety of local authorities and public bodies in respect of the various cross-boundary strategic issues which were engaged with the SDLP process. Alongside this documentation the Statement also set out discussions which had taken place at an elected member level with adjoining local authorities and briefings which had occurred with local MPs. Finally, the Statement also sets out the elements of peer review to which the SDLP process had been subject since the Regulation 18 draft consultation.
7. Whilst it is clear that the duty to cooperate, so far as it was relevant to the SDLP process, engaged a number of strategic issues, for the purposes of this judgment it is necessary to focus upon the strategic issue of housing need since, as will be seen, that was the issue which was principally of concern to the Inspector. In that connection it is necessary to set out the contents of the statements of common ground with, in particular, the neighbouring authorities of Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council, along with the conclusions of the peer review which was undertaken and relied upon in relation to the housing issue.
8. A statement of common ground was agreed between the claimant and Tonbridge Wells Borough Council on the 21 May 2019. Having set out the issue in relation to unmet housing need within the SDLP the statement of common ground records as follows:
  - “2.1.5 Discussions have taken place with neighbouring authorities in the HMA to discuss assistance with any unmet need, but no authority has been in a position to assist SDC with its unmet need.

2.1.6 TWBC is currently preparing its second Regulation 18 version of the Draft Local Plan for consultation, which includes the vision, objectives and growth strategy, overarching strategic policies, place shaping policies and detailed Development Management Policies.

2.1.7 TWBC is also constrained by the Green Belt (22%) and the Area of Outstanding Natural Beauty (70%) as well as areas of flood risk and traffic congestion. The Regulation 18 Draft Local Plan identifies the need for 13,560 dwellings in accordance with the Standard Methodology. Taking into account homes already built since 2013 and sites benefiting from planning permission and allocations within the existing Site Allocations Local Plan, TWBC is aiming to allocate land to meet the remaining balance of 8,914 (Note: this is still subject to change following ongoing work) dwellings. TWBC is seeking to meet its full objectively assessed need across the borough through development at a number of settlements, strategic release of Green Belt at Paddock Wood/Capel to allow expansion of the settlement and a new garden settlement within the Green Belt at Tudeley also within Capel Parish.

2.1.8 It is understood that, at present, TWBC is unable to assist SDC with unmet housing need, due to the constraints on both local authorities, and their inability to meet housing needs beyond their own, irrespective of unmet needs elsewhere.

2.1.9 Consequently, both councils will continue to work together and identify the position as both TWBC and SDC prepare to review their Local Plan every 5 years.

#### Actions

TWBC and SDC will engage through the wider Duty to Cooperate forum with other neighbouring authorities outside the West Kent housing market area in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London growth, large scale developments and opportunities for meeting any unmet need.

TWBC and SDC to each undertake a 5 year review of their respective Local Plans.”

9. The position in the statement of common ground is supported by the material contained within Tunbridge Wells Borough Council’s Hearing Position Statement for the purposes of the examination. The Hearing Position Statement observes that up until 11 April 2019 there had been discussions in relation to matters, including the meeting of housing need, and that those discussions were reflected in the observations made by Tunbridge Wells Borough Council during the Regulation 19 consultation, where they stated that there should be no presumption that there was any capacity within the Tunbridge Wells Borough Council area to accommodate unmet need from another

authority area. The Hearing Position Statement records that on the 11 April 2019 Tunbridge Wells Borough Council received a communication from the claimant formally asking whether or not they were in a position to meet any of the claimant's unmet housing need. At the duty to cooperate workshop on the 24 April 2019 (which is addressed further below) Tunbridge Wells Borough Council made clear that they would not be able to meet any of the claimant's unmet housing need. The Hearing Position Statement does however record as follows:

“1.06 It is considered pertinent to note that if the request from SDC to meet its unmet need had been made at any point prior to the submission of TWBC's comments on Sevenoaks regulation 19 representations then those representations would have addressed this issue more fully.”

The Hearing Position Statement goes on to record the observations made within the Statement of Common Ground and set out above and to indicate that the position from their perspective remained the same.

10. Tonbridge and Malling Borough Council also provided a hearing statement for the purposes of the examination. In their hearing statement they explain that during the consultations on both the Regulation 18 and Regulation 19 versions of their own Local Plan they had not received any request from the claimant to address unmet housing need. In the hearing statement they set out that there had been regular meetings between Tonbridge and Malling Borough Council and the claimant to address cross-boundaries strategic matters engaging the duty to cooperate. The essence of the position which they placed before the Inspector is set out in the following paragraphs of their hearing statement:

“13.5. It is evident that TMCB faces similar constraints and challenges to Sevenoaks District Council for that part of the Borough covered by the West Kent HMA. However, TMBC's response during plan-making has and continues to be significantly different to that of Sevenoaks District Council.

13.6. TMCB has responded positively to the Government's policy for plan-making by addressing in full its assessed need for housing plus some flexibility to adapt to rapid change. This is summarised in the TMBC Spatial Topic Paper. This has been challenging but TMBC understands that if suitable patterns of development are to be delivered and if the Local Plan is to positively address the acute need for housing, as demonstrated by the median housing affordability ratio, then sufficient sites need to be allocated for development to ensure there is no unmet need. This includes the removal of approximately 160 hectares of land from the Green Belt in the West Kent HMA to provide for residential development, as explained in the TMBC Green Belt Exceptional Circumstance Topic Paper.

13.7 Before addressing the matter of whether or not the unmet housing need could be accommodated in Tonbridge & Malling Borough it is important to first question whether it is reasonable

for Sevenoaks District Council to expect TMBC to address it. Given the similarities between the two authorities (see above), TMBC considers that it is entirely inappropriate to ask the Borough Council to accommodate unmet housing need in an area with the same constraints that have been dismissed by Sevenoaks District Council. It is important to bear in mind that the part of Tonbridge & Malling Borough falling within the West Kent HMA is wholly within the Green Belt (with the exception of the settlements not washed over by the designation).

13.8 If Sevenoaks District Council had adopted a similar positive approach to meeting the housing development needs of their area in full, it is possible that there would be significantly less or no unmet need to consider. It is unreasonable to expect TMBC to not only meet their assessed need for housing in full but to accommodate unmet housing need from Sevenoaks District Council who are facing similar constraints.

...

13.19 To conclude, it would be unreasonable to expect Tonbridge & Malling Borough Council to accommodate unmet housing need from Sevenoaks District Council given that TMBC is facing very similar constraints and challenges and is planning to address in full its own assessed housing need. Not only would it be unreasonable but factors including Housing Market Areas, market capacity and infrastructure mean that TMBC could not accommodate the identified unmet housing need.”

11. In addition to the contributions made by the local authorities directly concerned in the duty to cooperate, representations were also made, in particular to the examination process, by other parties who were interested in the issue. Representations were made both for and against the conclusion that the duty to cooperate had been satisfied in the present case. Whilst some reliance was placed upon this material by both parties at the hearing of this case, it suffices to record that there were a number of participants in the examination who maintained that the claimant had not complied with the duty to cooperate and that this was a fundamental flaw in the preparation of the SDLP.
12. As set out above the claimant placed reliance in support of its contention that the duty to cooperate had been satisfied upon the peer review of the plan process which had been commissioned as a cross-check in relation to the process. The first element of this work was the invitation extended by the Planning Advisory Service (“PAS”) to the claimant to participate in a pilot project in relation to the preparation of statements of common ground. This invitation was extended to and accepted by both the claimant and also Tonbridge Wells Borough Council and Tonbridge and Malling Borough Council. The programme led to a sequence of meetings, culminating in the preparation of notes reflecting the outcome of the project, dated the 3 April 2018. Paragraph 5.2 of the note of the discussions indicates that the need to address the matter of unmet housing need was acknowledged on all sides as the most significant issue that needed to be addressed in any statement of common ground between the parties. The note then considers the question of housing need in the three districts in the HMA, and from paragraph 6.1

onwards sets out the position in each of the authorities, and thereafter at paragraphs 8.4-8.5 notes the risks in the current position. The note provides as follows:

“6.1 Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017. In Sevenoaks the OAN of 11,740 (578 dpa) compares with an indicative figure of 13,960 (698 dpa) based on the government’s standardised methodology. In Tunbridge Wells the SHMA gives an OAN of 696dpa, which is consistent with the government’s indicative figure of 692 dpa using the proposed standard methodology.

6.2 The situation in Tonbridge and Malling is more complex. The evidence base, which includes an up to date SHMA covering 2 housing market areas, gives an OAN of 696 dpa. This is significantly lower than the indicative figure of 859 dpa using the proposed standardised methodology. Members have agreed to continue with 696 dpa figure. The Council accepts the standardised methodology and will reflect this as national policy in its Local Plan. However it proposes to demonstrate that the higher figure is undeliverable based on past trends and capacity issues. This position will be supported by evidence including the housing deliverability study prepared by G L Hearn in September 2017. The Council’s concerns are clarified in more detail in its consultation response to Planning for the Right Homes in the Right Places.

6.3 The emerging Tonbridge and Malling Local Plan, if it continues to propose a housing supply which is lower than the standardised OAN, clearly presents a risk to finalising an agreed SoCG. Whilst at present neither Sevenoaks or Tunbridge Wells will require Tonbridge and Malling to accept unmet need, it is possible that the reverse may apply. Even if all three Councils sign up to a SoCG which includes a lower housing figure for Tonbridge and Malling than the standard methodology indicates, this could be undermined when its Local Plan is examined.

...

8.4 The greatest risk to this SoCG is the decision by Tonbridge and Malling to continue plan for a level of housing supply which is below the OAN identified by the government’s standard methodology. As Tonbridge and Malling takes its Local Plan forwards it will be relying on evidence which states that capacity and delivery issues prevent it from states that capacity and delivery issues prevent it from meeting the higher OAN.

8.5 Whilst both Sevenoaks and Tunbridge Wells are aiming to meet their standard methodology OANs, both are heavily

constrained by green belt and infrastructure issues and are unlikely to be capable of accommodating unmet need from Tonbridge and Malling. This pilot project is not the appropriate place to address this matter in detail. However if the final SoCG is to have any real meaning and to be robust in supporting the three Local Plans there will need to be some hard talking within the group on this matter. This is a potential showstopper in terms of the utility of the SoCG and its capability of serving its desired purpose”

13. At a later stage it emerged that the note of the 3 April 2018 (which the claimant had included within the appendixes to the statement) had in fact been superseded in a subsequent note dated 10 April 2018. It seems that the representative of Tonbridge and Malling Borough Council had, in response to receipt of the 3 April 2018 draft, made suggestions in relation to amendments to the draft, including the observation that the claimant would have elements of unmet housing need. Thus, paragraphs 6.1 and following of the note were redrafted as follows:

“6.1 During the short lifespan of this pilot project there have been several changes to both the policy background, for example the revised draft of the NPPF issued for consultation on 5 March 2018 and to the emerging evidence base which will support the three Local Plans. Consequently the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue. The current situation, at the end of the pilot project, is as follows.

#### Sevenoaks DC

6.2 In Sevenoaks the OAN of 12,400 compares with an indicative figure of 13,960 based on the government’s standardised methodology. With Regulation 19 submission planned to take place in early 2019 it likely to fall outside the NPPF transition period, therefore the higher figure will apply. However the district is highly constrained, with 93% of the district lying within the Green Belt and 60% within AONBs.

6.3 The Council is currently examining the potential of releasing some Green Belt land where a convincing exceptional circumstances case is made. This would mean that any proposed development would need to deliver evidenced social and community benefits as well as housing. Sites where this might be the case will be the subject of Regulation 18 consultation. This may increase the housing land supply but it remains unlikely that Sevenoaks DC Tonbridge and Malling DC will be able to meet its housing need in full.

#### Tonbridge and Malling BC

6.4 The evidence base for the Tonbridge and Malling Local Plan, which includes an up to date SHMA covering two housing

market areas, gives an OAN of 696 dpa. This is significantly lower than the indicative figure of 859 dpa using the proposed standardised methodology. However the position has changed since the pilot project began with the revised NPPF draft proposing a transitional period for introducing the standardised methodology of assessing housing need. Provided the Regulation 19 submission can be made within the transition period, as proposed by the Council, then the lower locally derived OAN can be used. This level of housing growth is considered deliverable.

#### Tunbridge Wells BC

6.5 When the pilot project commenced Tunbridge Wells BC was planning to meet its locally derived OAN as determined by the joint SHMA which was updated in 2017. The SHMA sets an OAN of 696 dpa for Tunbridge Wells, which is consistent with the government's indicative figure of 692 dpa using the proposed standard methodology. Recently updated evidence on strategic flood risk suggests that some re appraisal may be necessary, but the Council is still endeavouring to ensure that it can meet its own housing need.

#### Summary

6.6 Each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling BC is confident that it can meet its need, Sevenoaks DC and Tunbridge Wells BC have not yet completed the work needed to determine whether or not they can meet their housing need. Thus the Councils are not yet in a position to reach agreement on their housing needs. The councils are not yet in a position to reach agreement on the matter of housing supply.”

14. In autumn 2018 the claimant commissioned Intelligent Plans and Examinations (IPE) to undertake a review of the Regulation 18 draft of the SDLP, with a particular focus on the Green Belt and the question of exceptional circumstances. A meeting was held on 1 November 2018, and on the 4 December 2018 Ms Laura Graham, who had undertaken the review, produced a report of her advice. Within that advice she noted that there was “no absolute requirement in the NPPF to meet housing need”, but that if development needs could not be met outside the Green Belt it would be necessary to demonstrate through the sustainability appraisal process that the consequences of not meeting that need had been fully and properly addressed.
15. On the 17 December 2018 the claimant contacted the Planning Inspectorate (“PINS”) with a view to arranging an advisory visit in order to assess the plan which was at that stage in the midst of the Regulation 19 consultation (the Regulation 19 consultation closed on the 4 February 2019). On the 6 February 2019 the advisory visit from PINS was undertaken by an experienced Inspector, Mr Jonathan Bore. One of the important topics for discussion at that meeting was the change that the claimant was considering to altering the base date of the SDLP to 2019-35. The note of the advisory visit identifies

that the plan fell seriously short of meeting its housing need in full, based upon the standard method. In relation to the duty to cooperate the note of the meeting records as follows:

“The Duty to Cooperate

Sevenoaks haven’t sent formal letters asking other authorities to accommodate unmet need. They say they don’t want to, because no authorities are willing to help with unmet need and asking the question would sour relations with them. Some neighbouring authorities such as Tandridge may also have unmet need. There is a SoCG with other authorities and a MOU with Maidstone, but the Council did not say that there is constructive engagement among the neighbouring authorities to resolve the issue, nor could they point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated.”

16. The note goes on to record the comments on the issues made by Mr Bore at the meeting. In particular, within the comments on the issues he noted as follows:

“If the OAN really could not be accommodated within the District, I said that there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis. Currently, despite the MoU and SoCGs, this did not appear to exist in a positive form. I said that any Inspector would look closely at this in regard to whether the Duty to Cooperate had been fulfilled.”

17. The advisory visit by Mr Bore on behalf of PINS was followed by correspondence from the defendant seeking to understand how the visit had gone, and offering assistance from PAS in relation to guiding the future progress of the plan. This correspondence led to a meeting on the 6 March 2019 between Mr Gleave and a colleague from the claimant and representatives of the defendants. The notice of the meeting of the 6 March observes as follows:

“Sevenoaks asked whether MHCLG meets with LPAs on a regular basis following an Advisory Visit or whether there were particular concerns with the emerging Sevenoaks plan. MHCLG explained that following the AV the Department had been made aware that there were some potentially significant issues with housing numbers and Duty to Co-operate, and constraints including Green Belt. Given these could be potential ‘showstoppers’ MHCLG wanted to talk through the issues, find out what further work Sevenoaks may be doing in respect of these and to discuss whether there is any assistance MHCLG could provide as the authority prepares its plan for submission.

In terms of the Duty to Co-operate, Sevenoaks explained they had met regularly with neighbouring authorities at Officer and Member level to discuss x-boundary issues, of which housing

need was a standing item on the agenda. In addition, a regular Kent-Planning Officers Group was held at Kent County Council. This operates along similar lines to the ALBPO forum in London and serves to update colleagues on Local Plan preparation. Statements of Common Ground are currently being prepared with neighbours on strategic cross-boundary matters, including housing need.

...

DR advised that the balance between protecting the environment and meeting housing needs was a planning judgement that had to be made locally. SH set out that the approach the LPA took would need to be justified, both in terms of why the authority was unable to meet its own needs and the reasons behind neighbouring authorities not being asked to accommodate some of Sevenoaks needs.”

18. On the 11 April 2019 Mr Gleave, on behalf of the claimant, wrote to neighbouring planning authorities in relation to the progress that was being made in respect of the plan. They were also invited to an event which was being facilitated by PAS to be held later in the month. The correspondence contains the following in relation to the duty to cooperate:

“The Council is of the view that all authorities bordering Sevenoaks, and Kent County Council, have engaged actively and on an on-going basis to meet the provisions of the Duty to Co-operate. In particular, Statements of Common Ground (SoCGs) are in the process of being agreed to formally clarify if it is possible to meet unmet housing needs from adjoining areas. Notwithstanding the provisions of the SoCG and for the sake of completeness, I write to formally ask if is in a position to meet any of Sevenoaks’ unmet housing need as outlined above. In the event that this is not possible, I would also be grateful for your views on the preparation of a joint sub-regional strategy to address future housing requirements.”

19. The duty to cooperate workshop took place on the 14 April 2019 and a note was prepared minuting the meeting. An experienced former Inspector, Mr Keith Holland, facilitated the workshop. Updates were provided by the local planning authorities who attended and, in particular, the update from the claimant identified that the SDLP housing supply left a shortfall measured against the standard methodology requirement of approximately 1,900 dwellings across the plan period, equating to about 17%. The claimant provided a summary of the activities which they had undertaken in order to address the duty to cooperate. Following discussion of the issues a note records Mr Holland advising that in his view “SDC has done all it can and is able to demonstrate that it has satisfied the duty to cooperate requirement”. This note of the workshop then records further discussions in relation to the potential to a sub-regional strategy to address unmet housing needs across the area.

20. A note of these meetings held with PAS was also provided by IPe who undertook the work for PAS. Their note covers both the meeting which was held on the 17 April 2019 and a first meeting between Mr Gleave and his colleagues on behalf of the claimant and Mr Holland. The claimant's position as expressed in the SDLP was explained to Mr Holland in the meeting on the 17 April 2019 and noted as follows:

“2.2 The discussion focussed on the implications of the DtC for the soundness assessment of the SLP. At the time of the meeting, the Council's intention was to submit the SLP for examination at the end of the month (it was subsequently submitted on 30 April 2019). The discussion included a review of advice provided by Laura Graham of IPe and Jonathan Bore from the Planning Inspectorate (PINS). SDC feels that there is a degree of inconsistency between the PINS advice and that provided by IPe. SDC believe that the advice from PINS is based on a misunderstanding of the approach being adopted by the SDC. In the view of the SDC, PINS failed to fully appreciate that the council attempts unmet housing need as an exceptional circumstance justifying consideration of Green Belt (GB) land release. What PINS calls a “Council imposed impediment” (the provision of infrastructure for the existing community) is not the defining exceptional circumstance consideration – it is simply the logical requirement that any development in the GB needs to be accompanied by adequate infrastructure. In other words, SDC believes that PINS has placed too much emphasis on the infrastructure point and not enough on the unmet need consideration.”

21. The note prepared by IPe in relation to the workshop on the 14 of April 2019 provides as follows in relation to the views expressed in respect of the duty to cooperate:

“3.3 The message regarding the importance of the DtC and the way it is dealt with at local plan examinations was repeated. All parties present appreciate how important the local duty is and how it has the potential to derail examinations. Each of the councils present outlined the position they are in at present regarding their development plans. From the discussion, it is clear that none of the authorities present are in a position to help meet any unmet housing need generated by SDC. In fact, most of the authorities believe that they are unlikely to be able to meet their own needs. The discussion thus confirmed and reinforced the contention made in the Submission version of the SLP that the Council is unable to meet its own needs and cannot rely on the DtC to resolve the problem. The importance of preparing a clear and convincing narrative for the forthcoming SDC local plan examination was again stressed.

3.4 The importance of continuing to seek to meet development needs in West Kent through cooperative strategic working was discussed. In this regard, the need for a strategic approach to infrastructure was emphasised. KH explained the importance of

getting member involvement and buy-in to any strategic work and that the more formal the process, the more likely it was to convince a local plan examiner that the councils are doing all they can to use the DtC effectively. Cllr Piper expressed severe reservations about the likelihood of effective strategic planning because of what he described as an inconsistency between the political message provided by the government regarding the GB and the guidance in the NPPF. KH pointed out that under the DtC there is nothing to stop local authorities undertaking joint strategic planning of the sort that previously happened in the South East through SERPLAN (London and South East Regional Planning Conference). KH also explained that the policy in the NPPF makes it clear that where there are exceptional circumstances local authorities can revise GB boundaries, but that this must be done through their local plans and not through the development management process.”

22. On the 30 April 2019 the plan was submitted for examination. As set out above Statements of Common Ground with neighbouring authorities were produced as part of the examination process. The examination hearing sessions commenced on the 24 September 2019, and issues in relation to the duty to cooperate were canvassed on the first day of the hearing. On the 14 October 2019 correspondence was received by the claimant from the Inspector raising concerns that she had in relation to whether or not the claimant’s approach to the SDLP had met the requirements of the duty to cooperate. There then followed further correspondence between the claimant and the Inspector which it is unnecessary to rehearse in detail for the purposes of this judgment. Suffice to say, that during the course of that exchange of correspondence the claimant provided detailed responses and further documentation including, for instance, the corrected note of the 10 April 2018. By the 13 December 2019 the Inspector had confirmed her view that the claimant had not discharged the duty to cooperate and therefore indicated that unless the claimant intended to withdraw the plan from examination the only course available was for her to produce a report concluding that the plan was not legally compliant. On the 3 January 2020 the claimant requested that the Inspector issue her report as soon as possible. This led to the production of the Inspector’s final report issued to the claimant on the 2 March 2020 and comprising the decision which is the subject of this challenge.
23. The Inspector’s final conclusions in relation to the issues with respect to the duty to cooperate are set out in the decision which is under challenge. In order to provide the full context for the Inspector’s decision it is necessary to set out her conclusions at some length. At the outset of her decision the Inspector set out that the starting point for the examination was the assumption that the local authority had submitted what it considered to be a legally compliant and sound plan. She confirmed that this was the basis for her examination. She further set out by way of introduction that having reached conclusions in relation to the duty to cooperate she did not go on to consider whether the plan was sound or was compliant with other legal requirements. She points out that if the local planning authority cannot demonstrate that the duty to cooperate has been complied with then, under section 20(7A) of the 2004 Act, the examiner is bound to recommend non-adoption of the local plan. In her decision the Inspector addresses the evidence in relation to the duty to cooperate in the following paragraphs:

“17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.

18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement and Appendices and in Appendix 1: Schedule A attached to its letter, dated 18 November 2019, with the minutes of most of these meetings provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group and the West Kent Statement of Common Ground (SoCG) Pilot Programme group.

19. The minutes of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues and Options (Regulation 18), do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPE), held on 22 January 2018, set out in the Facilitator’s Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

20. The notes of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks ‘is testing options to assess the way forward’. The summary of the meeting, held on 14 March 2018, set out in the Facilitator’s Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

The Facilitator's Note does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.

21. The Council has since stated, in Appendix 1: Schedule A to its letter, dated 18 November 2019, that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect, as it referred to Sevenoaks District Council planning to meet its OAN in full. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that 'the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue'. Paragraph 6.6 concludes that, 'each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need. Thus, the Councils are not yet in a position to reach agreement on the matter of housing supply'. As such, it is apparent that, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.

23. The minutes of the West Kent DtC meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the DtC meetings refer to addressing the unmet need in Sevenoaks is at the DtC meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted that 'officers discussed the potential requirement for a follow up letter to

request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.

24. Although the DtC statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.

25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>1</sup> within the HMA.

26. In paragraph 13.2 of its HPS, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers 'did not receive any formal requests to address unmet housing need' from Sevenoaks District Council.

27. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need

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following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.

28. In paragraph 1.04 of its HPS, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.

29. I appreciate that these neighbouring authorities say that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.”

24. The Inspector went on to address the statements of common ground which had been prepared in order to deal with cross-boundary issues. Her conclusion in relation to those statements of common ground is set out as follows:

“32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email to MHCLG, dated 15 March 2019, the Council says that it ‘is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.’ However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They imply that these matters will be dealt with in any review of the Plan. However, the Duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination.

33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.

34. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents engagement in relation to a solution in the future, not the submitted Plan. At the DtC Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders' meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan.”

25. The Inspector then proceeded to consider the question of the timing of the engagement in relation to, in particular, the extent of unmet housing need which was the strategic issue at the heart of her concerns in relation to the duty to cooperate. She sets out her conclusions in relation to this issue in the following paragraphs:

“35. The Council refers to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. The Council says, in its letter dated 18 November 2019, that it ‘could have gone back to neighbours at this point’, but decided not to, as it was felt that, as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated, ‘it was therefore extremely unlikely that a higher unmet need would be met elsewhere’. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.

36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that ‘all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other’ at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that ‘at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The

best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.’ However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.

37. The full extent of unmet need only became apparent to the Council following the consideration to the responses of the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs. This would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage. However, there is no evidence to show that this occurred. Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have been able to accommodate some of Sevenoaks’ unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.

39. It is noted that neighbouring authorities have not indicated any willingness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks’ housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been

significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need.”

26. The Inspector then proceeded to consider the peer review processes which had been undertaken by the claimant, in terms of external advice from IPE in November 2018, the PINS advisory visit in February 2019, the advice which had been received from the defendant and the review of the plan and the PAS workshop which had occurred on the 24 April 2019. Dwelling initially on the PAS workshop, and subsequently focusing on the other elements of peer review, the Inspector's conclusions are set out as follows:

“42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan, prepared by IPE, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement. This note concludes that ‘none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working’.

43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, the PAS Workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.

44. The Council says that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, significant concerns were raised in relation to the DtC at the Advisory Visit carried out by the Planning Inspectorate in February 2019, as set out in the note of this meeting.

44. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet

need and that it could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

45. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS Workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the DtC Statement was not submitted until May 2019. Nor would it have had the benefit of the time available to an Inspector for the examination of that detailed and complex evidence or the discussion at the Hearing sessions.

46. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement in which it states that 'KH advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPE, does not state that the DtC has been met or that KH advised that this was the case.

47. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective."

27. The final point addressed by the Inspector was whether it would be possible to proceed with the examination, applying the defendant's indication in correspondence with PINS that Inspectors should be pragmatic in getting plans into place. Her conclusions in relation to this point, and indeed the position overall, are set out in the following paragraphs of her decision.

"49. The Secretary of State wrote to the Planning Inspectorate, on 18 June 2019, in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority.

50. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also

stresses the importance of Inspectors working in a pragmatic way with Councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.

51. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.

53. For the reasons set out above the DtC set out in Section 33A has not been complied with.”

28. In the light of these conclusions the Inspector reached the overall decision that the duty to cooperate had not been complied with and therefore she was bound to recommend that the plan not be adopted.

The law

29. The SDLP, as a development plan document, has to be prepared in accordance with the provisions contained within Part 2 of the Planning and Compulsory Purchase Act 2004. Section 19 of the 2004 Act sets out certain requirements in relation to the contents of a development plan document. The relevant provisions of section 20 of the 2004 Act in relation to independent examination are as follows:

“20. Independent examination

(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.

(2) But the authority must not submit such a document unless-

(a) they have complied with any relevant requirements contained in the regulations under this Part, and

(b) they think the document is ready for independent examination.

...

(4) The examination must be carried out by a person appointed by the Secretary of State.

(5) The purpose of an independent examination is to determine in respect of the development plan document-

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound and

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.

...

(7) Where the person appointed to carry out the examination-

(a) has carried it out, and

(b) considers that, in all circumstances, it would be reasonable to conclude-

(i) that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, and

(ii) that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation, the person must recommend that the document is adopted and given reasons for the recommendation.

(7A) Where the person appointed to carry out the examination –

(a) has carried it out, and

(b) is not required by subsection (7) to recommend that the document is adopted, the person must recommend non-adoption of the document and give reasons for the recommendation.

(7B) Subsection (7C) applies where the person appointed to carry out the examination-

(a) does not consider that, in all circumstances, it would be reasonable to conclude that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, but

(b) does consider that, in all circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation.

(7C) If asked to do so by the local planning authority, the person appointed to carry out the examination must recommend modifications of the document that would make it one that-

(a) satisfies the requirements mentioned in subsection (5)(a), and

(b) is sound.”

30. As can be seen from the provisions of section 20, of particular note for present purposes is the provision contained in section 20(5) that the purpose of the independent examination includes an examination of whether the plan is sound, and also whether the local planning authority has submitted a document that has been prepared in compliance with the duty under section 33A of the 2004 Act in relation to its preparation. By virtue of the provisions contained within section 20(7), (7B) and (7C), where the Inspector determines that it would not be reasonable to conclude that the local planning authority had complied with the section 33A duty then the Inspector can neither recommend modifications nor adoption of the document. This is in effect what happened in the present case.

31. It is not disputed that the duty under section 33A of the 2004 Act applied to the preparation of the local plan by virtue of section 33A(3) of the 2004 Act. The nature and content of the duty is described in the following provisions of section 33A:

“33A Duty to co-operate in relation to planning of sustainable development

(1) Each person who is—

(a) a local planning authority,

(b) a county council in England that is not a local planning authority, or

(c) a body, or other person, that is prescribed or of a prescribed description, must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising

the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

(3) The activities within this subsection are—

(a) the preparation of development plan documents,

(b) the preparation of other local development documents,

(c) the preparation of marine plans under the Marine and Coastal Access Act 2009 for the English inshore region, the English offshore region or any part of either of those regions,

(d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs

(a) to (c) that are, or could be, contemplated, and

(e) activities that support activities within any of paragraphs (a) to (c), so far as relating to a strategic matter.

(4) For the purposes of subsection (3), each of the following is a “strategic matter”—

(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and

(b) sustainable development or use of land in a two-tier area if the development or use—

(i) is a county matter, or

(ii) has or would have a significant impact on a county matter.”

32. It will be noted from section 33A(7) that a person who is seeking to comply with the duty to cooperate must have regard to guidance issued by the defendant on how that duty is to be complied with. Material in that regard is contained both within the National Planning Policy Framework (“the Framework”) and in the Planning Practice Guidance

(“the PPG”). The relevant provisions of the Framework dealing with the duty to cooperate are set out in paragraphs 24-27 of the Framework as follows:

“Maintaining effective cooperation

24. Local planning authorities and county councils (in two-tier areas) are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries.

25. Strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans. They should also engage with their local communities and relevant bodies including Local Enterprise Partnerships, Local Nature Partnerships, the Marine Management Organisation, county councils, infrastructure providers, elected Mayors and combined authorities (in cases where Mayors or combined authorities do not have plan-making powers).

26. Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

27. In order to demonstrate effective and on-going joint working, strategic policy making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.”

33. Whilst addressing the provisions of the Framework it is worthwhile at this stage to note that the claimant’s argument includes the contention that the Inspector confused the requirements of the duty to cooperate with the examination of soundness required pursuant to the provisions of section 20(5). The policy in relation to whether or not a plan is sound is to be found in paragraph 35 of the framework in the following terms:

“35. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs and is informed by agreements with other authorities, so that

unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework.”

34. Turning to the PPG, it contains a considerable amount of guidance relating to the preparation of statements of common ground including their contents, subject matter and format. Of particular relevance to the issues in the present case are the provisions of the PPG dealing with the question of whether or not local planning authorities are required to reach agreement on strategic matters, and what should be done if they are unable to secure such agreements. The parts of the PPG dealing with this point are as follows:

“Are strategic policy-making authorities required to reach agreement on strategic matters, and what should an authority do if they are unable to secure these agreements?”

Strategic policy-making authorities should explore all available options for addressing strategic matters within their own planning area, unless they can demonstrate to do so would contradict policies set out in the National Planning Policy Framework. If there they are unable to do so they should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their plans for examination. Authorities are not obliged to accept needs from other areas where it can be demonstrated it would have an adverse impact when assessed against policies in the National Planning Policy Framework.

Inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or are not relying on the inspector to direct them. Where a strategic policy-making authority claims it has reasonably done all that it can to deal with matters but has been unable to secure the cooperation necessary, for example if another authority will not cooperate, or agreements cannot be reached, this should not prevent the authority from submitting a plan for examination. However, the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any

outcomes achieved; this will be thoroughly tested at the plan examination.”

35. In *Zurich Assurance Limited v Winchester City Council* [2014] EWHC 758 Sales J (as he then was) explained both the substance of the obligation imposed by section 33A and the role of the court in a challenge of the kind presently under consideration in the following terms:

“109. The duty to co-operate imposed by section 33A applies (so far as relevant in this case) in respect of the preparation of development plan documents “so far as relating to a strategic matter” (subsection (3)), as defined in subsection (4) (“sustainable development or use of land that has or would have a significant impact on at least two planning areas, [etc]”). The question of whether development or use of land would have a significant impact on two planning areas is a matter of planning judgment.

110. The obligation (see subsection (1)) is to co-operate in “maximising the effectiveness” with which plan documents can be prepared, including an obligation “to engage constructively [etc]” (subsection (2)). Deciding what ought to be done to maximise effectiveness and what measures of constructive engagement should be taken requires evaluative judgments to be made by the person subject to the duty regarding planning issues and use of limited resources available to them. The nature of the decisions to be taken indicates that a substantial margin of appreciation or discretion should be allowed by a court when reviewing those decisions.

111. The engagement required under subsection (2) includes, in particular, “considering” adoption of joint planning approaches (subsection (6)). Again, the nature of the issue and the statutory language indicate that this is a matter for the judgment of the relevant planning authority, with a substantial margin of appreciation or discretion for the authority.

112. WCC was required to have regard to the guidance about co-operative working given in the NPPF: subsection (7).

113. The limited nature of the role for the court in a case like the present is reinforced by the structure of the legislation in relation to review of compliance with the duty to co-operate under section 33A. The Inspector is charged with responsibility for making a judgment whether there has been compliance with the duty: section 20(5)(c) of the 2004 Act. His task is to consider whether “it would be reasonable to conclude” that there has been compliance with the duty: section 20(7)(b)(ii) and (7B)(b). A court dealing with a challenge under section 113 of the Act to the judgment of an inspector that there has been such compliance is therefore limited to review of whether the inspector could

rationally make the assessment that it would be reasonable to conclude that there had been compliance by a planning authority with this duty. It would undermine the review procedures in the Act, and the important function of an inspector on an independent examination, if on a challenge to a plan brought under section 113 the court sought to circumvent this structure by applying any more intrusive form of review in its own assessment of the underlying lawfulness of the conduct of the planning authority itself. A rationality standard is to be applied in relation to the decision made by the Inspector and in relation to the underlying decision made by WCC.”

36. In the subsequent case of *Trustees of the Barker Mill Estates v Test Valley Borough Council* [2017] PTSR 408 Holgate J endorsed and adopted the analysis of Sales J in *Zurich Assurance* (see paragraphs 55-57). Since the claimant places some reliance upon the conclusions of Holgate J in relation to the particular facts of that case it is necessary to set out Holgate J’s agreement in summary with Sales J, and then his analysis of the issues which arose in that case and how he resolved them. These points are dealt with in the following paragraphs of his judgment:

“58. In agreement with Sales J I consider that:—

(i) The question posed by section 20(7B)(b) of PCPA 2004 is a matter for the judgment of the Inspector;

(ii) The Court's role is limited to reviewing whether the Inspector could rationally make the assessment that

(ii) The Court's role is limited to reviewing whether the Inspector could rationally make the assessment that it would be “reasonable to conclude” that the LPA had complied with section 33A ;

(iii) It would undermine the structure of PCPA 2004 and the procedure it provides for review by an independent Inspector if, on a challenge made under section 113 , the Court sought to apply a more intrusive form of review in its assessment of the underlying lawfulness of the LPA's conduct or performance; form of review in its assessment of the underlying lawfulness of the LPA's conduct or performance;

59. The challenge under ground 2 is therefore directed to the Inspector's report, in particular paragraphs 10 to 14 where he stated:—

“10. On the first day of the Hearing a submission was made by a representor to the effect that the Council had failed in relation to the DtC [the duty to co-operate]. This was discussed in some detail at the Hearing, and in public correspondence between the representor, the Council and myself. The most important element of this submission was that the Council's identified affordable

housing need figure is 292 dwellings per annum (d.p.a.) (clarified by MM/5/1 ), with certain caveats, whereas the expected provision is 206 d.p.a. The Council put forward reasons for this position, but the DtC issue relates to the fact that the Council had not asked neighbouring authorities whether they could accommodate some or all of the identified shortfall.

11. There is nothing to suggest the extent to which any shortfall in affordable housing provision within Test Valley would lead to displaced demand affecting some or all of the eight adjoining authorities.

12. The objective of the DtC is to maximise the effectiveness of the plan making process. In this case the overall manner in which the Council has worked with other authorities, particularly but not exclusively in the southern part of the Borough, is impressive. In the light of their considerable experience, Council officers presented me with a very clear picture of the position of adjoining authorities in relation to affordable housing. To have made a formal request to adjoining authorities for assistance with affordable housing, when the Council knew full well what the answer would be, would not have been effective or productive.

13. In subsequent correspondence the representor also stated that there would be a shortfall in market housing, and that the DtC would additionally be triggered in this respect. However, as I conclude (below) that the RLP will meet the full OAN for market housing, this matter does not trigger the DtC.

14. The Council has clearly taken into account the wider strategic context and the interrelationships with neighbouring areas, particularly in terms of housing markets and employment patterns. I am satisfied that the Council has engaged constructively, actively and on an ongoing basis with relevant local authorities and organisations, and I conclude that the DtC has been met.

...

60. The Claimants submit that where an LPA cannot meet its own FOAN for affordable housing then it must “explore under the ambit of the duty to co-operate whether any unmet needs can be met within adjacent LPAs” (paragraph 68 of skeleton). The proposition is said to be based upon paragraphs 104 and 106 of the judgment of Hickinbottom J in *Gallagher* . But in fact the Judge did not determine any issue in relation to section 33A nor did he lay down the proposition for which the Claimants contend.

61. It is to be noted that the Claimants' proposition is limited in scope. This is not a case where non-compliance with section 33A is said to have occurred because the Defendant failed to address

the inclusion of a policy in its plan for meeting needs arising outside its area. The Claimants simply argue that TVBC should have “explored” with other LPAs the issue of whether the shortfall in meeting the FOAN for affordable housing in its area could be dealt with in their areas. In essence, this is the same complaint as that raised at the Examination, namely that TVBC failed to put this question to the other authorities.

62. The Claimants were not at all precise as to what the use of the term “explore” should be taken to mean, although it lies at the heart of the ground of complaint. By implication the Claimants recognise that TVBC was not in a position to complete other authorities to provide for TVBC's shortfall and that they might legitimately say that they were unable to assist. Here the word “explore” suggests obtaining sufficient information about affordable housing needs in the areas of other LPAs and their ability to satisfy their own needs and any additional needs from other areas. In the light of that information a plan-making authority could decide, as a matter of judgment, whether it would be worthwhile to pursue negotiations with one or more other authorities to assist with its shortfall.

63. In this case the Claimants made no attempt to show the Court that TVBC either lacked this information or that, in the light of the information it had, TVBC's judgment that there was no point in pursuing negotiations with other authorities on this point was irrational. In his reply, Mr Cahill QC confirmed that the only criticism of the Inspector's report is one of irrationality and is limited to the last sentence of paragraph 12, in which he had said that there had been no need for TVBC to make a “ formal request” to adjoining authorities when it knew full well what the answer would be. He also stated that no legal criticism is made of the penultimate sentence of paragraph 12 in which the Inspector said that TVBC's officers had given him a very clear picture of the position of adjoining authorities in relation to affordable housing.

64. In fact, paragraph 12 is a summary of what the Inspector had been told during the Examination. In inquiry document IN009 (dated 19 December 2014) the Inspector explained that the extent of cross-boundary working had been explained by TVBC not only in its “Duty to Co-operate Statement” but also in the Hearing sessions, including one devoted to affordable housing. TVBC had been actively engaged in the production of a number of informal strategies and evidence based studies with other authorities and stakeholders. The extent of the working with other authorities was described by the Inspector as “impressive”. It was from this information that he reached the judgment that TVBC's officers were “fully aware that other authorities would not be in a position to assist with any shortfall”. Plainly the

Inspector relied upon this information when writing paragraph 12 of his Report on the Examination.

65. When paragraph 12 of the Report is read properly in the context of the material which was before the Examination, the Inspector, in his review of TVBC's performance, was entitled to reach the conclusions that (i) they had obtained sufficient information from the cross-boundary work which had in fact taken place on whether adjoining authorities would be able to provide affordable housing to meet any part of needs arising within TVBC's area and that (ii) it would have been pointless to make a "formal request" for assistance in meeting TVBC's shortfall. It is impossible for the Court to treat to Inspector's conclusions as irrational and so ground 2 must be rejected."

37. In *R(on the application of St Albans City and District Council) v SSCLG and others* [2017] EWHC 1751 Sir Ross Cranston dealt with an application for judicial review in which it was contended that an Inspector's conclusion that the duty to cooperate had not been satisfied was unlawful. The factual circumstances of that case involved the claimant's argument that the Inspector had failed to properly take into account the polarised position or impasse which had emerged in relation to contentions between the claimant and the adjoining local planning authorities with respect to the housing market. Having accepted and endorsed the approach taken in *Zurich Assurance* and *Trustees of Barker Mills*, Sir Ross Cranston concluded that the reasons provided by the Inspector demonstrated that he was fully aware of the disagreement between the council and adjoining local planning authorities in relation to the definition of the housing market area and appreciated the issue. The judge was satisfied that the decision adequately reasoned the conclusions that the Inspector had reached. In paragraph 51 of the judgment Sir Ross Cranston went on to accept the defendant's submission "that once there is disagreement, I would add even fundamental disagreement, that is not an end of the duty to cooperate". He concluded that the duty to cooperate remained active and ongoing "even when discussions seemed to have hit the buffers". Whilst in reaching this conclusion he placed some reliance on a decision of Patterson J in *R(on the application of Central Bedfordshire Council) v SSCLG* [2015] EWHC 2167 (Admin), which the parties in the present case accepted could not be authoritative as it was a permission decision which did not contain a statement that it could be cited in accordance with the Practice Direction on the Citation of Authorities, 9 April 2001 and, furthermore, was overturned by the Court of Appeal in granting permission to appeal.. Nonetheless the observations of Sir Ross Cranston are in my judgment properly capable of being considered as free standing, relevant and reliable, bearing in mind the fact-sensitive nature of the judgment which has to be reached in each individual case in which the duty to cooperate is being examined, and taken in the context of the particular facts of the case he was considering.

#### Submissions and conclusions

38. On behalf of the claimant Ms Saira Kabir Sheikh QC advances the case on four grounds. The first ground is that the Inspector failed when reaching her conclusions to apply the margin of appreciation which ought to be afforded to the claimant pursuant to section 33A of the 2004 Act. It is Ms Sheikh's submission, based upon both the wording of the statute and also the decisions in *Zurich Insurance* and *Barker Mills*, that when

considering whether or not the claimant had discharged the duty to cooperate in preparing the plan the Inspector was required to afford a margin of appreciation to the claimant and she failed to do so. In particular Ms Sheikh relies upon the contention that the Inspector sought to substitute her own judgment for that of the claimant and adjoining authorities where, for instance, in paragraph 29 of her report she concludes that, notwithstanding the fact that the adjoining authorities indicated that there had been regular constructive and cooperative liaison, she was not satisfied that that had in fact taken place. The discarding of the opinions of adjoining authorities demonstrated that the Inspector had failed to afford the claimant the margin of appreciation to which it was entitled.

39. Moreover, Ms Sheikh disputes the contention that the Inspector applied the correct test in reaching her conclusions: whilst the Inspector made assertions about unmet housing need being met elsewhere outside the claimant's administrative area, in reality the claimant was fully aware from its engagement with neighbouring authorities that there was no possibility of unmet housing need being met elsewhere. The Inspector's approach, for instance in paragraph 37 of her report, demonstrates that the Inspector's focus was upon what a local planning authority might do in the event of unmet housing need arising and was not focused on the particular circumstances of the claimant and its own knowledge and judgment as to what might be expected from any dialogue with adjoining authorities. Effectively, the whole tenor of the Inspector's report reflects the substitution of her own judgment for that of the claimant, without affording the claimant the margin of appreciation to which they were entitled.
40. Ms Sheikh also contends that her approach to the statements of common ground illustrated a similar error. The statements of common ground illustrated the depth and extent of the claimant's engagement with adjoining authorities, and her assertion that these had been drafted too late to influence the plan misunderstood both her role and the proper approach to be taken to the duty to cooperate.
41. In response to these submissions Mr Richard Moules, on behalf of the defendant, submits that when the Inspector's report is read as a whole it is clear that she has applied the correct approach. She started from the proposition that the plan had been submitted by the claimant in what it considered to be a legally compliant and sound form. In paragraph 37 of her report she clearly applied the test of what it was "reasonable to expect" the claimant to have done in the circumstances which arose. Fundamentally, Mr Moules submits that the present case had little to do with the margin of appreciation, on the basis that the Inspector's judgment as to what the claimant had done demonstrated that in fact they had done nothing constructive to explore addressing unmet housing need at the appropriate time during the plan's preparation. The Inspector concluded that the claimant could reasonably have been expected to do something in the circumstances which arose when the extent of unmet need emerged, but in fact did nothing.
42. Moreover, Mr Moules maintains that the Inspector was entitled to scrutinise the assertions of the adjoining authorities and if she concluded that, having evaluated all of the available evidence, it was not "reasonable to conclude" that the duty to cooperate had been satisfied then she was entitled to reach the conclusion which she did. Further, in applying the statutory tests at paragraph 26 of the Framework, the Inspector needed to examine whether the claimant had taken reasonable steps to explore meeting its unmet housing need. In doing so the Inspector was not effectively adopting the

approach of asking what a hypothetical authority would have done but was rather discharging the statutory tests on the facts of this particular case. The undoubted existence of the margin of appreciation should not stand in the way or act as a disincentive to local planning authorities working together to help to solve difficult and controversial problems of, for instance, unmet housing needs where the authority areas are the subject of environmental constraints.

43. Turning to Ground 2, Ms Sheikh contends that in reaching her conclusions the Inspector failed to correctly interpret and apply the duty to cooperate and conflated it with the statutory requirement that the plan should be sound. Central to her submission is that the Inspector misdirected herself by working backwards from evidence which might go to the soundness of the plan to reach conclusions on whether or not the duty to cooperate had been discharged. She worked backwards from the existence of unmet need to reach a conclusion that there had been a failure to comply with the duty to cooperate. This confused and conflated the two issues of the duty to cooperate and soundness. The evidence of this error exists, for instance, in paragraphs 17 and 24 of the Inspector's report in which she focusses on the existence of unmet need and the failure to resolve that issue. Ms Sheikh submits that the reality was that at the stage that unmet need was clearly identified it was well known that it could not realistically be met elsewhere. In effect, the Inspector erroneously considered the duty to cooperate in the light of the unmet housing need, rather than examining the requirements of the duty to cooperate itself in order to understand whether it had been discharged. The issue of unmet need and whether the housing figures and delivery proposed by the SDLP were justified was an issue connected with soundness and not the duty to cooperate.
44. In response to these submissions Mr Moules contends, firstly, that the Inspector was careful to distinguish between the duty to cooperate and the requirements of soundness in the substance of her report. Secondly, Mr Moules submits that when the Inspector's decision is properly understood, it correctly distinguished between the duty to cooperate and soundness. The problem, as identified by the Inspector, did not lie in the existence of unmet housing need in and of itself but rather in the claimant's failure to engage with adjoining authorities constructively, actively and on an ongoing basis in order to consider an attempt to find a solution that that unmet housing need at the time when it emerged. The Inspector recognised, in particular in paragraph 39 of her report, that it may not be possible for the claimant's housing need to be met in full, but concluded that earlier and fuller proactive engagement might have made it "significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need". In truth, Mr Moules contends that the claimant highlights two paragraphs (paragraphs 17 and 24) which in fact exemplify the Inspector addressing and setting out the essence of the claimant's failure to engage in ongoing active and constructive engagement with the neighbouring authorities in relation to the strategic issue of unmet housing need, rather than confusing the questions arising under the duty to cooperate with those which arose in respect of soundness.
45. Turning to Ground 3, Ms Sheikh on behalf of the claimant submits that the Inspector failed to have regard to the available material evidence furnished by the claimant. The evidence demonstrated that the claimant was both aware that there would be an unmet need, but also as a result of its duty to cooperate discussions with adjoining authorities was aware that regardless of the scope of the unmet need neighbouring authorities would not be able to assist. This point is not grappled with, she submits, by the

Inspector, and, in particular, the Inspector fails to grapple with the extensive environmental constraints that each of the authorities have to work with. In addition, Ms Sheikh submits that the statements of common ground ought not to have been disregarded in the way the Inspector did by treating them as too late to influence the SDLP. In fact, that documentation reflected years of discussions between the authorities and was highly relevant to demonstrate that the duty to cooperate had been discharged. Further, the lack of a formal request for assistance from the claimant did not demonstrate non-compliance with the duty to cooperate: the reason that no formal request was made was because as a result of the exercise of the duty to cooperate the claimant was well aware that unmet need could not be met elsewhere.

46. In response to these submissions Mr Moules submits that, firstly, the Inspector addressed whether or not there had been discussion of meeting unmet need for a considerable time and concluded on the evidence, as she was entitled to, that there was no evidence to support the claimant's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities (see paragraph 35). Secondly, Mr Moules submits that the Inspector was clearly aware of the constraints under which both the claimant and the adjoining authorities operated: these were referred to at several points during the course of her report. Thirdly, the Inspector explained clearly her conclusion that the claimant had neither demonstrated that it had constructively and actively pursued solutions to the unmet housing need it had identified with its neighbours at the appropriate time during preparation of the plan, nor that cooperation with its neighbours was an impossibility in respect of meeting any of the unmet housing need arising. Fourthly, Mr Moules submits that, again, the Inspector clearly explained for good reason that the statements of common ground had arrived too late in the process to support the conclusion that the duty to cooperate had been complied with. Fifthly, the claimant's complaint in relation to the Inspector's view on the lack of the formal request to neighbouring authorities is submitted by Mr Moules to be simply another disagreement on behalf of the claimant with the Inspector's planning judgment that it was unreasonable for the claimant to do nothing by way of meaningful exploration of solutions to meet the identified housing need shortfall.
47. Finally, by way of Ground 4, Ms Sheikh submits that the Inspector failed to give adequate reasons for the claimant's failure to comply with the duty to cooperate or, alternatively, the Inspector's conclusion was irrational. In particular it is submitted that the Inspector failed to provide adequate reasons as to why weight was placed upon the claimant's failure to make a formal request for assistance earlier and further failed to adequately reason why she disregarded the evidence of neighbouring authorities in relation to the duty to cooperate, or why she suggested that the statements of common ground did not provide evidence of compliance to cooperate. In the light of the evidence the Inspector's conclusions were irrational.
48. In response to these submissions Mr Moules submits that the Inspector's conclusions on each of the issues relied upon were clear and entirely rational. As the Inspector explained, had formal requests for the adjoining authorities been made as soon as the full extent of the claimant's unmet housing need became apparent then it may have been possible through constructive engagement to achieve a more positive outcome and maximise the effectiveness of the plan (see paragraphs 37-39 of the Inspector's report). The Inspector's reasoning showed that the neighbouring authorities' views were taken

into account, but as the Inspector explains they could not allay the concerns that she had clearly identified. The statements of common ground were, for the reasons the Inspector gave, provided too late to furnish evidence of compliance with the duty to cooperate in relation to the unmet housing need identified. Finally, Mr Moules submits that it is unarguable that the Inspector's conclusion was irrational.

49. In forming conclusions in relation to these competing submissions it is necessary, in my view, firstly to analyse the substance of the legal issues which arise in relation to the duty to cooperate under section 33A of the 2004 Act. Thereafter, secondly, it is important in my view to be clear as to the nature of the decision which the Inspector reached and the specific basis for her conclusions.
50. As described in paragraph 33A(2)(a) the duty to cooperate, when it arises, requires the person who is under the duty "to engage constructively, actively and on an ongoing basis" in relation to the preparation of a development plan document (see paragraph 33(A)(3)(a)) "so far as relating to a strategic matter" (see paragraph 33A(3)(e)) to "maximise the effectiveness" of the activity of plan preparation. Whilst during the course of her submissions Ms Sheikh points out that activities were undertaken by the claimant in relation to a broad range of strategic issues concerned with infrastructure and wider environmental designations, and she relied upon the numerous strategic matters with which the claimants were concerned in preparing the SDLP, it is in my view clear that the duty to cooperate arises in relation to each and every strategic matter individually. There was, therefore, no error involved by the Inspector in the present case focussing upon one of those strategic matters in reaching her conclusions in respect of the duty to cooperate.
51. I accept the submission made by Ms Sheikh that discharging the duty to cooperate is not contingent upon securing a particular substantive outcome from the cooperation. That was a proposition which was not disputed by Mr Moules. I accept, however, his submission that the duty to cooperate is not simply a duty to have a dialogue or discussion. In order to be satisfied it requires the statutory qualities set out in section 33A(2)(a) to be demonstrated by the activities comprising the cooperation. As Sales J observed in paragraph 110 of *Zurich Assurance*, deciding what ought to be done to meet the qualities required by section 33a(1)(c)(2)(a) "requires evaluative judgments to be made by the person subject to the duty regarding the planning issues and use of limited resources available to them." As Sales J also observed, bearing in mind the nature of the decisions being taken a court reviewing the decision of an Inspector making a judgment in respect of whether there has been compliance with the duty will be limited to examining whether or not the Inspector reached a rational decision, and will afford the decision of the Inspector a substantial margin of appreciation or discretion. It is against the background of these principles that the submissions of the claimant fall to be evaluated.
52. The second issue is, as set out above, to be clear as to the nature of the decision which the Inspector reached. In that connection, in my judgment the submissions made by Mr Moules in relation to Ground 4 are plainly to be preferred. Having carefully examined the Inspector's conclusions they were, in my judgment, clearly expressed and set out in detail the reasons for the conclusions that she reached. I am unable to identify any defect in the reasoning of her report which sets out clearly and in full detail her conclusions and the reasons for them.

53. It is clear from the report that the conclusions of the Inspector were that the claimant became aware of the detailed extent of its unmet housing need after the Regulation 18 consultation which ceased on the 10 September 2018 (see paragraph 27 and paragraph 35). The first minutes of a duty to cooperate meeting referring to addressing unmet housing need in the claimant's area was on 13 March 2019, after the Regulation 19 consultation on the SDLP, and seven weeks prior to submission of the SDLP for examination (see paragraph 23). The minutes of the duty to cooperate meetings provided "no substantial evidence that the council sought assistance from its neighbours in meeting its unmet housing need" prior to the publication of the Regulation 19 version of the SDLP (see paragraph 24). The claimant did not request assistance from Tunbridge and Malling Borough Council during the course of Regulation 19 consultation on the Tonbridge and Malling Local Plan between 1 October and 19 November 2018 to assist with unmet housing need in the claimant's area (see paragraph 27), and only made formal request to ask whether or not Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council would assist in meeting the claimant's unmet housing need after the Regulation 19 consultation had been completed and just prior to submitting the plan for examination (see paragraphs 27 and 28). The statements of common ground were completed after the submission of the plan for examination and prepared too late to influence the content of the plans preparation (see paragraphs 32 and 33). Whilst the claimant contended that discussions had already indicated prior to the extent of unmet housing need emerging following the Regulation 18 consultation and further engagement was not undertaken because it had already been indicated that an unmet need of 600 dwellings could not be accommodated, the Inspector concluded that there was no evidence to support the assertion that discussions had already indicated an unmet need of 600 dwellings could not be accommodated (see paragraph 35).
54. Thus, the Inspector concluded in paragraph 37 of her report that it was reasonable to expect that the claimant would, after the extent of the unmet housing need emerging following the Regulation 18 consultation, have undertaken constructive engagement in an attempt to resolve the issue prior to the publication of the Regulation 19 version of the plan. Whilst that process may or may not have been fruitful, the Inspector observed that "it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place". The peer review process did not assist: the PAS workshop was undertaken at a very late stage the plan process and "if the engagement had occurred as soon as the council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome" (see paragraph 43). The visiting Inspector raised issues which were not adequately resolved before the plan was submitted (see paragraph 44).
55. From this distillation of the Inspector's conclusions and reasoning it is clear to see that there is no substance in the claimant's grounds. In my view it perhaps makes most sense to start with the claimant's Ground 2, the contention that the Inspector failed to properly interpret and apply the duty to cooperate and conflated it with the requirement for soundness. In my view there is no basis for this contention when the Inspector's conclusions and reasons are properly understood. Firstly, as to the application of the test it is clear from paragraph 37 that the Inspector directed herself to whether, in accordance with the requirements of section 20(7)(a)(ii), it was reasonable for her to conclude that the duty to cooperate had been complied with. She found that once the

extent of the unmet need emerged after completion of the Regulation 18 consultation on the SDLP, the claimant should have contacted its neighbouring authorities and engaged constructively in an attempt to resolve the issues arising from its unmet housing needs. Her conclusion that there was no communication, let alone engagement, in between the emergence of this issue and embarking upon a Regulation 19 consultation underpinned her conclusion that there had not been constructive, active and ongoing engagement in relation to that issue. It is clear from paragraphs 37 and 43, and indeed from the totality of her reasoning, that what she was scrutinising and assessing was not the identification of a particular solution for the strategic issue of unmet housing need, but rather the quality of the manner in which it had been addressed. Her conclusions were, based on her factual findings as to what in fact happened after the Regulation 18 consultation disclosed the extent of the unmet housing need, that no constructive and active engagement was undertaken at the time when it was required in advance of the Regulation 19 version of the SDLP being settled. These conclusions properly reflected the statutory requirements and the evidence which was before the Inspector and do not disclose any misdirection on her part, or confusion between the requirements of the duty to cooperate and the requirements of the soundness with respect to this strategic issue.

56. Turning to Ground 1 there is force in the submission made by Mr Moules that, in truth, this is a clear-cut case based on the findings that the Inspector reached. As set out above, the Inspector concluded (as she was entitled to on the evidence before her) that at the time when the strategic issue in relation to unmet housing need crystallised, there was no constructive, active or ongoing engagement and, indeed, the matter was not raised with neighbouring authorities until after the Regulation 19 consultation on the SDLP and at a very late stage in plan preparation. Requests made of neighbouring authorities on the 11 April 2019 post-dated the Regulation 19 consultation and were shortly prior to the plan being submitted. In those circumstances the Inspector was entitled to conclude that these discussions were not taking place at a time when they could properly inform and influence plan preparation and maximise the effectiveness of that activity. As the Inspector recorded in paragraph 37, she found, as she was entitled to, that had engagement occurred after the Regulation 18 consultation and prior to the Regulation 19 consultation “it might have resulted in a more positive outcome”. Further, as the Inspector recorded, the possibility that it may have led to the same outcome was nothing to the point. Effective, constructive and active engagement had not taken place at the time when it was required. By the time there was communication in respect of the issue it was too late.
57. Although the claimant stressed its belief that whenever called upon to do so neighbouring authorities would have refused to provide assistance, I am not satisfied that this provides any basis for concluding that the Inspector’s conclusions were irrational. Indeed, as she notes, Tunbridge Wells Borough Council noted in its written material that if the request to address the claimant’s unmet housing need had been made at any point prior to the submission of its comments on the Regulation 19 version of the plan then their response would have addressed the issue more fully. There was, therefore, evidence before the Inspector to support her judgment in this respect. In the light of these matters I am unable to accept that there is any substance in the claimant’s Ground 1. There is no justification for the suggestion that the Inspector failed to afford a margin of appreciation to the claimant in reaching her conclusions; the clear-cut nature of the conclusions which the Inspector reached were fully set out and ultimately

the Inspector was required by section 20 of the 2004 Act to reach conclusions in relation to the statutory test which she did.

58. Turning to the submissions in relation to Ground 3, I am unable to accept that the Inspector failed to have regard to the material which was available to her in reaching her conclusions. It is clear to me from the detail of the report that the Inspector had regard to all of the evidence that had been placed before her. The Inspector clearly addressed the detailed material in relation to the duty to cooperate meetings and the preparation of joint evidence. She also engaged with the existence of statements of common ground and the views of the neighbouring local authorities. She gave careful consideration to the peer review which had been undertaken and reflected on the responses from adjoining authorities to request they meet unmet housing need from the claimant and the environmental constraints under which the claimant had to operate. In my view the submissions advanced in respect of Ground 3 effectively amount to a disagreement with the Inspector on the conclusions which she ought to have forged based upon the material which was before her. Ultimately, the availability of this evidence did not dissuade the Inspector from reaching the conclusions which she did in respect of quality and timing of the engagement in the present case: the generality of the position presented by the claimant does not gainsay the detailed conclusions reached by the Inspector as to the nature of the duty to cooperate activities, or lack of them, at the critical point of time when the extent of nature of the unmet housing need emerged at the conclusion of the Regulation 18 consultation. In my view it is clear that the Inspector had careful regard to all of the material which was placed before her and reached conclusions which, I have already set out in respect of my views on Grounds 1 and 2, were lawful and appropriate.
59. I have already expressed my view as to the quality and nature of the reasons provided by the Inspector in respect of the examination. In my view her reasons were clear, full, detailed and justified. In addition, under Ground 4 it is contended that the conclusion which she reached was irrational. In my judgment there is no substance whatever in that contention. For the reasons which I have already given the Inspector's conclusions were clearly open to her and based upon a proper appreciation and application of the relevant statutory tests.
60. It follows that for all of the reasons set out above I am satisfied that there is no substance in any of the grounds upon which this claim is advanced and the claimant's case must be dismissed.



## Appeal Decision

Inquiry held on 9-12 December 2014

Site visit made on 12 December 2014

**by John Felgate BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 20 January 2015**

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**Appeal Ref: APP/A1720/A/14/2220031**

**Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Village Green PLC against the decision of Fareham Borough Council.
  - The application Ref P/13/1121/OA, dated 20 December 2013, was refused by notice dated 11 March 2014.
  - The development proposed is "*erection of 37 dwellings together with associated access and parking for existing play area*".
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### DECISION

1. The appeal is allowed and planning permission is granted for the erection of 37 dwellings together with associated access, and parking for the existing play area, on land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick, Hampshire, in accordance with the terms of the application, Ref P/13/1121/OA, dated 20 December 2013, subject to the conditions set out in the attached schedule.

### PRELIMINARY MATTERS

2. The planning application seeks outline permission with all matters reserved except for access, which is proposed to be from Swanwick Lane, adjacent to the existing play area. The application is accompanied by an 'Indicative Layout' (Plan No PP1220-101-00, Revision P2), but in relation to all matters other than access, that plan is purely illustrative.
3. The Council's decision notice listed four refusal reasons (RRs). RR2 related to affordable housing and ecological mitigation. Since then however, the appellants have entered into a legal undertaking which provides for ecological mitigation by way of a financial contribution. And with regard to the affordable housing, the Council now accepts that this could be secured by condition. RR2 was therefore not pursued at the inquiry.
4. RR3 related to noise. Subsequently, the appellants have submitted a noise survey report. In the light of this report, it is now agreed that any issues relating to this matter could also be deal with by condition.
5. RR4 contained a list of the submitted plans. The Council now accepts that since this did not in fact state any reasons for objection, it should not have

appeared as an RR. The only one of the original refusal reasons that remains at issue between the parties is therefore RR1.

6. As well as dealing with ecological mitigation, the legal undertaking provides for the implementation of a landscaping scheme and a woodland management plan, and the setting up of a management company with responsibility for the upkeep and maintenance of the landscape and woodland areas within the proposed development.

## **PLANNING POLICY BACKGROUND**

### **The development plan**

#### *The Fareham Borough Local Plan (the FBLP), adopted March 2000*

7. The FBLP was designed to accord with the former Hampshire Structure Plan Review. Its intended plan period was 1999-2006. In 2007, a large number of the FBLP's policies were saved by a direction from the Secretary of State. The majority of those have since been replaced by the 2011 Core Strategy, but some have continuing effect.
8. Saved Policy DG4, which applies throughout the District, states that development will be permitted, provided that various requirements are met. These include that proposals should not detract from the natural landform, and should respect inward and outward views.
9. On the proposals map, the appeal site is included in an area designated as countryside.

#### *The Fareham Core Strategy (FCS), adopted August 2011*

10. The FCS has a plan period of 2006-26. It was intended to conform with the regional strategy contained in the South-East Plan (the SEP), approved in May 2009. It was also prepared in the context of the then-emerging South Hampshire Strategy (the SHS), a non-statutory sub-regional plan by the Partnership for Urban South Hampshire (PUSH), a consortium of 11 local authorities<sup>1</sup>.
11. Policy CS6 sets out the development strategy, which is to focus new development in various specified locations. One of these is the Western Wards, which includes Lower Swanwick. Priority is to be given to the re-use of previously developed land within defined settlement boundaries<sup>2</sup>. Policy CS9 sets out further criteria for development in the Western Wards, which include protecting the setting of the existing settlements.
12. Outside defined settlement boundaries, Policy CS14 states that development will be strictly controlled, to protect the landscape character, appearance and function of the countryside and coastline. In coastal locations, the policy seeks to protect the special character of the coast, when viewed from land or water.
13. Policy CS17 seeks to encourage good design which responds positively to the key characteristics of the area, including its landscape.

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<sup>1</sup> The SHS later became informally adopted by the partnership authorities in October 2012

<sup>2</sup> The FCS does not include any new proposals map of its own. The plan is accompanied by an 'interactive proposals map', but this is stated not to form part of the adopted plan itself. In the absence of any other indication, it appears that references in the FCS to 'defined settlement boundaries' relate to the boundaries shown on the proposals map of the FBLP. This interpretation is not disputed in the present appeal.

## **Emerging plans**

*The draft Development Sites and Policies DPD (the DSP), submitted June 2014*

14. The DSP is intended to provide for the development requirements identified in the FCS up to 2026, and also the increased levels of housing and employment proposed over the same period in the SHS. The DSP covers the whole of the District except for the proposed new community of Welborne.
15. On the DSP's proposals map, the appeal site forms part of an 'area outside of defined settlement boundaries'. In such areas, draft Policy DSP7 proposes a presumption against new residential development.
16. At the time of writing this decision, the draft DSP has completed the hearing stage of its public examination, and is awaiting the Inspector's report. Until then, the plan remains subject to unresolved objections in respect of the policies and designations relevant to the present appeal. As such, it carries limited weight.

*The draft Welborne Plan (the WP), submitted June 2014)*

17. The draft WP is an area action plan which sets out policies and proposals for the development of the new settlement, over a period running to 2036. At present, the WP has reached the same stage as the DSP, and is awaiting the Inspector's report. In so far as the WP is relevant to the present appeal, it is subject to unresolved objections, and thus its weight is limited.

## **National policy and guidance**

*The National Planning Policy Framework (the NPPF)*

18. The NPPF states at paragraph 6 that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 9 states that sustainable development involves seeking positive improvements in the quality of the environment and in people's quality of life; amongst other things, this includes widening the choice of high quality homes. Paragraph 14 states that there is a presumption in favour of sustainable development.
19. Paragraph 17 sets out core planning principles. These include proactively driving and supporting sustainable economic development to deliver the homes and other development that the country needs. Every effort should be made objectively to identify and then meet those needs, and to respond positively to opportunities for growth. The core principles also include recognising the intrinsic character and beauty of the countryside, conserving and enhancing the natural environment, and focusing development in sustainable locations.
20. At paragraph 47, the NPPF seeks to boost the supply of housing significantly. Local plans should aim to meet the full, objectively assessed need for market and affordable housing, as far as is consistent with other NPPF policies. Paragraph 49 states that policies for the supply of housing should not be considered up to date if a 5-year supply of deliverable housing sites cannot be demonstrated.
21. Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes. Paragraph 114 seeks to maintain the character of the undeveloped coast and its distinctive landscapes.

22. Paragraphs 186 and 187 requires that all planning decisions should be approached positively, by looking for solutions rather than problems, and that applications for sustainable development should be approved where possible.

*Planning Practice Guidance (PPG)*

23. The PPG provides further guidance on the policies in the NPPF. Paragraph 8-001 makes it clear that the NPPF's aims for the natural environment are not limited only to areas that are formally designated. Sections 2a and 3 contain more detailed advice on assessing housing needs and land availability, to which I will refer further below.

**MAIN ISSUES**

24. In the light of the matters set out above, and all of the submissions before me, both oral and written, it seems to me that the main issues in the appeal are:
- Whether it can be demonstrated that the District has a 5-year supply of land for housing development, to satisfy the requirements of the NPPF;
  - And the proposed development's effects on the character and appearance of the area.

**REASONS FOR DECISION**

**Housing land supply**

25. The Council claims a housing land supply of over 13 years. The appellants contend that the true figure is only just over 3 years. The divergence results firstly from a fundamental difference as to the size of the requirement that is to be met, and also from various other smaller, but significant differences in both methodology and assumptions. I will deal with each of these differences below.
26. The Council's land supply calculations are based on meeting the requirements in FCS Policy CS2, plus a small uplift reflecting the additional requirements suggested in the 2012 SHS. The appellants accept that on this basis a 5-year supply can be demonstrated, but they contend that the FCS/SHS figures are the wrong basis for the calculation.
27. The appellants' own calculations are based on the housing need projections in the Strategic Housing Market Assessment (SHMA) report for South Hampshire, published in January 2014. The Council, whilst disputing the use of the SHMA figures over the FCS, maintains that a 5-year supply can be demonstrated on this basis too.

*The Council's preferred housing requirement - based on FCS Policy CS2*

28. The PPG advises that the starting point for assessing the 5-year land supply should be the housing requirement figure in an up-to-date adopted local plan, and that considerable weight should be given to such a figure (paragraph 3-030). In the case of Fareham, the FCS is an adopted plan, and is only a little over 3 years old since its adoption. In such circumstances, it might often be unnecessary to look any further.

29. However, the PPG goes on to make it clear that this is not always the case:

*"(Considerable weight should be given to the housing requirement figures in adopted local plans) ...unless significant new evidence comes to light. It should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs.*

*Where evidence in local plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered."*<sup>3</sup>

30. In the present case, the FCS's housing requirement was directly derived from the now-revoked SEP. That plan was itself based upon an earlier version of the SHS, approved by the member authorities as long ago as 2005, which in turn was based on evidence necessarily dating back to before that time. Having regard to the PPG advice therefore, it seems to me that the FCS appears to be an example of the kind of local plan that is envisaged as being potentially out-of-date: that is, one where the evidence base dates from long ago, and where circumstances have changed so that the plan may not now adequately reflect current needs.
31. Furthermore, the FCS pre-dates the NPPF. As already noted, the NPPF places emphasis on ensuring that local plans set out to meet the full objectively assessed need (OAN) for housing, as far as is consistent with other relevant policies. This is a significant change compared to the previous national policy in Planning Policy Statement 3 (PPS3), which was in place at the time when the FCS was adopted. Although the relevant part of the NPPF (paragraph 47) is couched in terms that relate principally to plan-making, the Courts have determined that the same principles should be assumed to apply equally in decision-making, including development control decisions<sup>4</sup>. In the Borough of Fareham, the Council accepts that the FCS was not informed by any assessment of full OAN, and neither does it attempt to explore how far the OAN could be met. It follows that, in respect of matters relating to housing needs and targets, the policies of the FCS cannot be said to be consistent with the approach advocated in the NPPF. Paragraph 215 of the latter makes clear that in such cases, development plan policies may carry less weight relative to national policy and other considerations.
32. It is true that the Council's land supply calculations are not reliant solely on the FCS, because they also take account of the 2012 SHS, which is a more recent document, based on data that is more up to date than the FCS. But the SHS, like the FCS, is not derived from any assessment of full OAN, and does not address the question of what is the OAN, or whether it can be met. In the absence of knowing the full OAN, it seems to me that the 5-year supply exercise cannot serve its intended purpose. Consequently, merely adding an SHS element onto the Policy CS2 housing requirement does not overcome the fundamental shortcomings of the FCS itself, or those of any land supply calculations based on it.
33. I therefore conclude that the weight that can be given to the Council's calculations, based on the FCS and the SHS, is limited. This being so, it seems to me that the next step must be to look at any other available evidence of housing needs, and to assess whether, for the purposes of this appeal, this is likely to provide a better guide to OAN.

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<sup>3</sup> PPG 3-030 (emphasis added)

<sup>4</sup> Gallagher Homes Ltd and Lioncourt Homes Ltd v Solihull MBC: [2014] EWHC 1283 (Admin)

*The alternative housing requirement - based on OAN*

34. I therefore turn to the appellants' proposed alternative, of using the figures from the 2014 SHMA report. In considering the SHMA, I have taken particular account of the letter on this subject from the Minister of State for Housing and Planning, issued on 19 December 2014, after the close of the inquiry, and the appeal parties' comments on the contents of that letter.
35. In the case of the South Hampshire SHMA, there can be no doubt that the report's intention and main purpose is to quantify the OAN, for the sub-region as a whole, and for its constituent housing market areas (HMAs) and districts. This aim is made clear, both in the report's own introduction, and in the officers' report which accompanied it to the PUSH joint committee, in January 2014. The SHMA report examines in considerable detail the various alternative demographic projections, market signals, economic trends, and the needs of different groups, including the need for affordable housing. Having done so, it presents a number of housing need scenarios, reflecting a range of differing assumptions. Without question, this is a substantial body of work, and one that appears both comprehensive and thorough.
36. The SHMA report pre-dated the coming into force of the PPG. However, it was prepared in the light of the earlier draft version, and against the established background of the NPPF, and its methodology appears broadly consistent with the subsequent guidance. The SHMA has yet to be fully tested, but nonetheless, it has evidently been accepted by the PUSH authorities, including Fareham, as a basis for the forthcoming review of the SHS and subsequent local plans. Moreover, the very fact that the SHMA has been commissioned jointly, on behalf of all the South Hampshire authorities, gives it added weight.
37. Certainly, the SHMA figures have not been moderated to allow for any constraints, or to take account of any opportunities for cross-boundary co-operation. However, these are not necessary for the purposes of defining the OAN. A good deal more work will be required before the SHMA figures can be translated into proposed housing policy targets. But that does not prevent those figures from being used in a 5-year land supply calculation now, because this is exactly what the PPG advises in a situation where the adopted plan has become out of date. At the inquiry, the Council's witness agreed that the SHMA represents the best and most up-to-date evidence of OAN currently available, and I see no reason to disagree with that view.
38. For these reasons, I conclude that the 2014 South Hampshire SHMA appears to represent a respectable and credible picture of the OAN for housing in Fareham. As such, it seems more likely to present a realistic picture of housing need than the FCS. Of these two options therefore, it seems to me that the SHMA provides the more suitable basis for a 5-year land supply calculation at the present time.

*The OAN figure*

39. Although the SHMA covers a wide range of alternative scenarios, there is agreement between the Council and the appellants that, if the SHMA-based approach is used, then the most appropriate set of figures for the purposes of this appeal is that referred to as 'PROJ2 - Midpoint Headship'<sup>5</sup>. This is

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<sup>5</sup> As set out in the SHMA report at Appendix U, Table 19 (on p51 of the Appendices)

essentially a demographic-based projection of housing need linked to the ONS sub-national population figures, with an adjustment for future changes in migration, and incorporating a household formation rate mid-way between those of the 2008-based and 2011-based DCLG projections. On this basis, Fareham's OAN, over the period 2011-36, would be 395 dwellings per annum.

40. Despite this measure of agreement, some of the evidence presented at the inquiry still questions whether 395 p.a. is high enough, having regard to the level of need in the affordable housing sector, and the need to avoid restricting economic growth. Even the Council's own witness admitted that economic trends were more likely to push the OAN up from that figure rather than down, and that on any basis, the full OAN was unlikely to be less than 395 p.a. However, it is not the function of this appeal to attempt to determine the future level of housing required in Fareham. The reason for exploring these matters is simply to choose the most appropriate figure for testing the 5-year supply at this point in time. None of the evidence identifies any other specific figure within the SHMA as being preferable to 395 dwellings per annum.
41. In passing, I note the Council's point that just because 395 p.a. is the average across the whole of the SHMA's 25-year period, that does not necessarily mean that the annual rate should be constant throughout. This may be so, but again, there is no specific evidence to support any alternative phasing. In the light of all the evidence before me, I conclude that 395 dwellings p.a. is a reasonably robust basis on which to proceed.
42. On this basis therefore, 5 years' worth of the annual OAN would be 1,975 dwellings. With the addition of a 5% buffer, which is not disputed, the overall 5-year requirement becomes 2,074 units<sup>6</sup>.

*The Council's suggested adjustment for over-delivery in previous years*

43. This requirement of 2,074 exceeds the Council's claimed supply of 1,926 dwellings<sup>7</sup>. However, the Council argues that the requirement should be reduced because, during the period 2006-14, housing completions exceeded the requirement in Policy CS2 by 401 units.
44. In putting forward this argument, the Council relies on paragraph 3-036 of the PPG, which states:  

*"In assessing need, consideration may be given to evidence that a Council has delivered over and above its housing needs". (3-036)*

In the light of this advice, the Council's case is essentially that this means that the past 'overprovision' should be deducted from the requirement for the next 5-year period, in full, irrespective of whether that requirement figure is based on the FCS or the SHMA.
45. I have considered this argument carefully. However, the PPG advice relates specifically to a situation where housing delivery has exceeded the area's housing needs, rather than a policy requirement. In this case, for the reasons explained above, I have come to the view that the Borough's housing needs are now more accurately expressed in the SHMA projections than in the FCS.

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<sup>6</sup> In the parties' evidence this is shown as 2,075, due to rounding the buffer from 19.75 to 20 units for each individual year

<sup>7</sup> As amended by Mr Home in oral evidence, from the figure of 1,876 which appears in the statement of common ground

Measured against the SHMA figure of 395 units per annum, there has been no over-provision or over-delivery.

46. I appreciate that the SHMA was only published in January 2014. But it relates to a period that started from April 2011, and it is therefore logical to take account of the housing needs that have arisen over the whole of that period. I fully accept that during 2011-14, the Council could not have been expected to meet a need which it was not aware of at the time, but that is not the point here<sup>8</sup>. With the benefit of the information now available, what was previously seen as an over-delivery against the FCS requirement during those three years, can now be seen to have been in reality a slight under-delivery compared to the level of actual need.
47. For the years 2006-11, there is no assessment of OAN. Housing completions in that period exceeded the relevant policy requirement in the FCS, but that does not mean that they exceeded the need. And in any event, this period prior to 2011 is now somewhat historic. I appreciate that 2006 was the start of the FCS period, but now that the FCS is no longer the best reference point for future housing needs, it becomes questionable whether housing completions from before 2011 have any continuing relevance.
48. Furthermore, even if I were to take a different view on these matters, so that the 401 dwellings over-delivery against the FCS were to be deducted from the SHMA-based requirement as suggested, it is far from clear why the whole of the 401 should be offset against the needs of just the next 5 years. I appreciate that this would mirror the 'Sedgefield method', but that approach is normally used where the past performance has been one of under-provision, and in that kind of situation there is consequently a clear imperative to achieve a rapid increase in the rate of delivery. In the reverse situation, as here, there is no such imperative. Arguably, the effect would be a sharp reduction, which would be at odds with the NPPF's aims to maintain continuity of supply and boost overall provision. The Council has presented no cogent rationale for this approach.
49. The PPG advice referred to above allows for consideration of the effects of past over-delivery, but does not specify what action should then be taken. It may be that in some circumstances an adjustment to the requirement for future years would be justified, but here, for the reasons that I have explained, that is not the case. I can see nothing in the PPG which sanctions the approach now proposed by the Council in deducting 401 units from the requirement side of the 5-year supply calculation.
50. I therefore conclude that no adjustment should be made in respect of the past over-delivery against the FCS requirement.

*The supply side: Welborne*

51. The Council anticipates 500 completions, within the 5-year period, at the proposed new settlement of Welborne. This is supported by the planning and development programme agreed with the scheme's promoters and other relevant agencies, which indicates work starting on site in March 2016, and the first 120 dwellings being completed by March 2017. The Council acknowledges

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<sup>8</sup> As noted at the inquiry, this argument might be relevant in other circumstances, such as where the point at issue relates to whether there has been 'persistent under-delivery' for the purposes of the NPPF buffer; but the issue here is distinct from that type of assessment

that this programme is both challenging and ambitious, but regards it as achievable.

52. However, the planned scheme is for a very large development, amounting to some 6,500 dwellings overall, plus employment, retail and other land uses. In terms of the practicalities of development, the site is completely undeveloped land, and major new infrastructure works of all kinds will be needed. A connection to the M27 is required, involving a new junction and slip roads. Developer partners, to take the lead in house-building and infrastructure works, have not yet been identified. Some of the land is not yet within the control of the current promoters, and the possible need to use compulsory purchase powers has not been ruled out. Although the Council maintains that the scheme will be financially viable, it admits that viability has been identified as a significant issue, and remains under review.
53. In terms of its planning status, although the general location of the development has been identified for many years, the formal allocation and specific site boundaries remain to be confirmed in the Welborne Plan, which is still under examination. No planning permission exists, nor has an application been made. Any application is likely to be subject to an environmental assessment, for which some of the necessary survey work will be limited as to the time of year. Some parts of the site apparently have protected status under European legislation, and a mitigation strategy may need to be agreed with Natural England before an application can be considered. There is no clear evidence as to how much of this work has already been done. I have no reason to doubt that ultimately the hurdles can be overcome, but that does not mean that they can be overcome quickly.
54. I note the Council's suggestion that, if necessary, a first phase of 500 dwellings could be brought forward as a stand-alone scheme, in advance of the new motorway junction and other new facilities. But there is no proper evidence regarding the feasibility of this option, or its effects on the development programme. The Welborne Plan clearly seeks a comprehensive approach, as set out in draft Policy WEL4.
55. The NPPF's test for inclusion in the 5-year supply includes the requirement that sites should have a realistic prospect of delivering houses within that timescale. At the inquiry the appellants' witness accepted that there was a possibility of up to 50 units coming forward within the 5-year period, although no more than that. I do not disagree with that assessment. But a mere possibility is not the same as a realistic prospect.
56. There can be no doubting the amount of work that has already gone into the Welborne scheme, or the commitment of all the parties involved. However, it is equally clear that there is still a long way to go before any houses can start to be built. For a development of this scale, with no planning permission or current application, nor yet even a detailed site allocation, five years is not a long time. From the evidence presented, it seems to me that the Council's development programme for Welborne relies at each stage on the absolute minimum timescales, or less. That approach may have its merits in some other context, but for the purposes of assessing the 5-year supply, it lacks flexibility. For this purpose, it would be more realistic in my view to assume that the development is likely to come forward in a slightly longer timescale, pushing the first completions beyond the 5-year period.

57. I conclude that the Council has failed to show a realistic prospect that development at Welborne is likely to contribute to the 5-year supply. The site therefore cannot be regarded as deliverable at this stage, in terms of the NPPF requirement. This reduces the Council's claimed supply by 500, to a maximum of 1,426 units.

*The supply side: other disputed matters*

58. A number of other sites in the Council's supply, totalling 202 units, are disputed by the appellants. I appreciate that some of these do not yet have planning permission. However, the information that the Council has provided indicates that the sites are likely to come forward within the requisite period. Some are proposed allocations in the draft DSP, which remain to be considered, but I am not aware of any objections to the principle of development on any of these sites. Some of the sites have other issues to be addressed, relating to access, trees and other detailed matters, but there is no suggestion that these are likely to be insoluble. None are so large that they would require more than five years to complete. In all of these cases, there is sufficient evidence to justify treating these sites as deliverable.
59. The Council's supply figures also include a windfall allowance of 100 dwellings across the 5-year period. I accept that this may involve a risk of some overlap with sites that are counted in other categories. But on the other hand, the Council's supply does not count identified sites of less than five units, including those with permission, which total 139 units. The Council suggests that, for the purposes of this appeal, these two figures are close enough to offset each other. In the interests of avoiding unnecessary complexity, I agree.
60. I therefore make no further adjustment to the Council's supply figure in response to the disputed sites or the windfall allowance. But in any event, in the light of the conclusions that I have already reached above, these matters do not affect the final outcome of the land supply calculation.

*Conclusions on housing land supply*

61. From the above, I conclude that the 5-year requirement, based on the best evidence of the OAN, should be 2,074 dwellings. This requirement should not be adjusted to take account of over-delivery prior to April 2014. Against this, the Council's maximum claimed supply is only 1,926 dwellings. The supply must therefore be less than the minimum 5 years required by the NPPF.
62. In addition, the Council's figure over-states the supply, by including 500 units at Welborne, which should not yet be counted as deliverable within the relevant 5-year period. When these are deducted, the realistically deliverable supply becomes 1,426 units. This amounts to only around 3.4 years.
63. Although the DSP and WP are at the examination stage, there is no evidence to suggest that the adoption of those plans in the near future would significantly change the housing supply situation from that considered at this inquiry. All in all, I conclude that a 5-year supply has not been demonstrated.
64. In the light of this finding, NPPF paragraph 49 requires that any relevant policies for the supply of housing be treated as out-of-date. For the purposes of the present appeal, it is not disputed that these include Policy CS14, in so far as the latter provides for settlement boundaries, and seeks to restrict housing development anywhere outside them. Accordingly, although the appeal site is

outside the boundary of Lower Swanwick, the resulting in-principle conflict with Policy CS14 carries relatively little weight.

65. In addition, the lack of a 5-year supply also means that added weight should be given to the benefits of providing housing to meet local needs.

### **Effects on the area's character and appearance**

#### *Effects on the character and appearance of the countryside*

66. In policy terms, the countryside is defined by the FBLP proposals map. On that map, the settlement of Lower Swanwick appears separated from the River Hamble by a continuous swathe of countryside, coloured green, and the appeal site is included in that area. Based on the proposals map, the loss of the appeal site would bring the urban area closer to the river, reducing the remaining countryside at that point to little more than a narrow strip along the water's edge. However, that is an impression conveyed by a map produced for a particular purpose. As its name suggests, the proposals map is concerned with policies and the control of development in the future; it is not necessarily intended to depict what exists now, nor can it be definitive in that respect. And in any event, for the reasons explained earlier, the settlement boundaries currently carry reduced weight, due to the lack of a demonstrated housing supply. For the purposes of this appeal therefore, it seems to me that any assessment of the appeal site's contribution to the countryside cannot usefully be done simply by reference to the FBLP proposals map. Rather, such an assessment should be based on what is seen on the ground.
67. The appeal site comprises an undeveloped grass paddock, currently used for grazing horses. To that extent, it might be arguable that the site has some resemblance to open countryside. However, the site lies at the junction of Lower Swanwick's two main roads, Bridge Road (the A27) and Swanwick Lane, which is effectively the settlement's centre. On its south-eastern and north-eastern sides, the site abuts existing residential areas. Adjacent to Swanwick Lane there is also a children's play area. To the south-west and north-west, fronting the river, is an extensive area of boat yards, workshops, moorings and related development, plus The Navigator pub and its car park. The appeal site is thus surrounded on all sides by urban land uses and built development, and at no point does it abut or connect with any other undeveloped or un-urbanised land. Consequently, notwithstanding its designation as countryside, what is seen on the ground amounts to no more than a relatively small, self-contained patch of vacant land, wholly enveloped within the built-up area.
68. How the site looks in reality is therefore quite different from the impression gained from the proposals map. To a large extent, this difference is explained by the treatment of the boatyards which encircle the appeal site on two sides. On the proposals map these are included in the countryside, thus creating the apparent connection between the appeal site and the river, and thence to the more open countryside beyond. I take no issue with this approach in terms of the policies that this implies for the yards themselves. But in terms of their effect on how the appeal site is perceived, the reality is that the boatyards comprise mainly large-scale, industrial-style buildings and a large expanse of hardstanding. Visually, these appear as an integral part of Lower Swanwick's built-up area. As such, their effect is not to link the appeal site to the river and

countryside, but rather to separate it from those, and to enclose it within the settlement.

69. In addition, the Swanwick Marina site, which includes the greater part of this boatyard area, has planning permission for redevelopment, including a pavilion building of up to 3 storeys, with retail units, bar and restaurant facilities, plus new workshops and offices, and 49 dwellings. The effect of that scheme, it seems to me, can only be to reinforce the urban character of the marina/boatyards area, further consolidating the settlement pattern and the appeal site's sense of containment within the urban area.
70. Similarly, to the north of the appeal site, the settlement boundary excludes some of the residential properties at Green Lane, suggesting a connection between the appeal site and the countryside beyond. However, as I saw on my visit, Green Lane is entirely residential in character, and functionally is fully part of the settlement of Lower Swanwick. Whilst the excluded properties are relatively low-density, a number such as 'Highfield' and 'Genesta' have been extended or replaced, becoming more prominent as a result. Consequently the Green Lane residential area is a highly visible part of the backdrop to the appeal site. Again, I do not mean to question the settlement boundary itself, as far as it relates to the Green Lane area, or the policies to be applied there. But in relation to the appeal site, the presence of residential development along the full length of its north-eastern boundary contributes to the impression of a site encircled by existing development, and reinforces the site's visual containment within the settlement.
71. This impression of containment is increased yet further by the dense woodland belt that runs along the appeal site's north-western boundary, partly within the site itself and partly on adjoining land. Some of the trees in this belt result from the additional planting that was carried out a few years ago. I note the comments made at the inquiry as to the possible motive for that planting, but this has no relevance to the planning merits of the site or the proposed development. To my mind, the tree belt has an attractive, naturalistic appearance, and continues the line which is already established along the top of the river bank further to the north. Its effect is to further reinforce the site's separation from the river, and its association with the built-up area.
72. I note the contents of the 1996 Landscape Character Assessment (LCA)<sup>9</sup>. That report found that the appeal site had 'strong visual links with the river and boat-related activities on the south side of the road'. That may have been so then, and indeed might still be so. But the boat-related activities referred to must presumably have been those in and around the boatyards, and for the reasons already given, my view is that that area has more affinity with the built-up area than the countryside. In any event, I can see nothing in this comment that could be said to endorse the view that the appeal site formed part of the countryside, either then or now. Neither is there any support for that view in the 2012 LCA<sup>10</sup>; indeed that report includes the appeal site in the urban area.
73. There are mid-range and longer views of the site from the A27 river bridge, and the railway bridge, and from Lands End Road on the opposite bank. But from all of these viewpoints, the site is framed by buildings and urban land

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<sup>9</sup> Fareham Borough Landscape Assessment : Scott Wilson Resource Consultants, May 1996

<sup>10</sup> The Hamble Valley Integrated Character Assessment : Hampshire County Council, May 2012

uses on all sides. Indeed, in respect of the view from Lands End Road, the Council made the point more than once at the inquiry, that the appeal site is the only piece of green space or open land that is visible. In addition, in all of these views, the site is partially screened by the tree belt or boatyard buildings. In none of them is the appeal site a main focus or a key element of the view. No other significant public viewpoints have been identified, other than from the roads immediately adjacent to the site itself. In my opinion all of these available viewpoints merely serve to reaffirm my earlier judgement, that the site's setting and context is formed primarily by the built-up area of Lower Swanwick.

74. In these circumstances, I conclude that the appeal site, in its undeveloped state, contributes nothing of any significance to the character or appearance of the countryside. It follows from this that, whatever visual impact the development might have, that impact would not be likely to significantly affect the countryside.

*Effects on the character and appearance of Lower Swanwick - loss of openness*

75. Seen from within Lower Swanwick, the appeal site appears essentially as an open, grassed field, sloping towards the A27. There is an attractive, medium-sized native poplar tree in one corner, at the Swanwick Lane junction, and the woodland belt on the opposite boundary, but there is no suggestion that the proposed development would put these at risk. In all other respects, the site is featureless and unremarkable.
76. If the site were developed as proposed, its present openness would be lost. However, as far as I am aware, the site has never been formally identified as an important open space, or any similar designation based on its townscape value or any contribution to the character or appearance of the settlement. Bearing in mind the other planning considerations discussed above, and especially the urban nature of the location, and the unmet need for housing, in these circumstances the loss of openness on its own is not a compelling objection.
77. Development on the lower part of the site could potentially obstruct views towards the waterfront from Swanwick Lane and the play area. Although the river itself is not visible from here, its presence is signalled by the sight of the many boat masts which extend above the roofs of the boatyard buildings, and I can appreciate why that sight would be missed by residents. But that consideration alone is not overriding. The site is not in a conservation area, nor would the proposed development appear to affect any views into or out of any such areas. The view from Swanwick Lane was not identified as a consideration in the design officer's pre-application comments, or in the planning officer's report, nor in the refusal reasons. Nor was it identified in either of the relevant LCAs. There is also no evidence that this was seen as an issue in the Council's earlier decision on the Swanwick Marina scheme, which seems likely to have a greater impact on the same view. Consequently, I am not convinced that the view from Swanwick Lane is such an important planning consideration as to outweigh the other matters that I have identified.
78. And in any event, the existing views need not be lost altogether, because layout and design are reserved matters. If the Council regards the views from Swanwick Lane as a priority issue, there seems no reason why the height and disposition of the buildings could not be designed to take this into account, by

creating gaps and preserving lines of sight where necessary. The current illustrative layout does not do this, but that plan is not binding, either on the Council or a future developer. Development on the remainder of the site would have little or no impact in terms of views towards the river. Given the size of the site as a whole, and the lack of constraints in most other respects, I see no reason why an acceptable alternative scheme could not be designed which takes account of the relevant viewpoints from within Lower Swanwick.

79. I also note the other points made in support of the retention of some openness at the site's southern corner, to create a landscaped area around the road junction and the poplar tree. I agree that this could well be an attractive approach, and this might be one possible way of producing the urban design focus that the 1996 LCA saw a need for here. But there is no reason why this should be the only way. In any event, for the same reasons as above, an outline permission based on the present application would not prevent this or any other approach from being followed at the reserved matters stage.
80. And furthermore, looking at the site as a whole, it seems to me that at that stage there would be the opportunity to seek to secure a high-quality scheme which could make better use of the land than at present, and which could enhance the urban townscape at this potentially important focal point. In the present outline application there is no guarantee that this opportunity would be realised, but the outcome would be at least partly in the Council's hands.
81. For these reasons, I have come to the view that the loss of the appeal site in its undeveloped state would not have any unacceptable adverse impact on the character or appearance of Lower Swanwick, and indeed could prove beneficial.

*Effects on Lower Swanwick – the quantity of development proposed*

82. Averaged across the site, the proposed development of 37 dwellings would amount to a density of about 32 dwellings per hectare (dph). That is slightly higher than the average within the surrounding residential area, but not unduly so. Nothing in the NPPF or PPG suggests that new development should be required to match that of its surroundings as a matter of course. Rather, the emphasis is on making good use of land, encouraging innovation, and good design, whilst still respecting local character and identity.
83. If development on the lower part of the site were restricted for any of the reasons discussed above, that would tend to increase the density of the remainder of the site, to above 32 dph. At the extreme, if all of the built development were concentrated in the upper area, the density there would be around 47 dph. But that would be offset by a lower density in the lower area; it would not change the overall density of the development as a whole. The existing settlement itself contains a wide range of variation in densities, both above and below what is now proposed; including lower density at Green Lane, but higher in the Swanwick Lane terraces, the Swanwick Quay flats, and the proposed Marina development. There is nothing inherently objectionable about such differences.
84. I accept that the submitted illustrative plan has some shortcomings. I agree that it would be desirable for the development to present an active frontage to the public realm, including Swanwick Lane and the play area, and that issues such as overlooking and relationships to surrounding properties need careful

attention. But all of these are reserved matters, and there is nothing to suggest that they cannot be resolved at the appropriate stage.

85. I note that there is now no dispute that the north-western tree belt could be satisfactorily protected by the relevant provisions contained in the undertaking, together with a buffer zone which could be secured by condition.
86. Having regard for all the evidence before me, I can see no reason why an outline permission for 37 units should not be able to produce a satisfactory detailed scheme which satisfies national and local design policies.

*Other matters relating to effects on character and appearance*

87. Although the appeal site was included in the coastal zone that was identified in the FBLP, that policy has now ceased to have any effect. I note the suggestion that the 'coastline' and 'coastal locations' now referred to in Policy CS14 must be the same as that area, but this does not follow. The areas in question are not defined on any map. Whilst Lower Swanwick might be described as being just within the upper reaches of the river estuary, it is some way from what would normally be considered the coastline. In my view, the area is clearly not the kind of 'undeveloped coast' to which paragraph 114 of the NPPF refers. In any event, for the same reasons as those given above, I do not consider that the development would have any significant adverse effect on the character or appearance of the coastal area, or that of the Hamble estuary.
88. As I have already indicated, I appreciate that the site is valued by local people. However, the NPPF advice on protecting 'valued landscapes', in paragraph 109, is placed in the context of conserving and enhancing the natural environment. In the present case, in view of my conclusions on the above matters, it seems to me that the appeal site does not contribute significantly to the natural environment in any of the ways to which this paragraph is directed. I can therefore find no reasonable basis for applying paragraph 109 here.

*Conclusions regarding the effects on character and appearance*

89. I conclude that the proposed development would have no material adverse effects on the character or appearance of the countryside, or of the settlement of Lower Swanwick. As such, it would not conflict with any of the relevant policies, including FLBP Policy DG4, or FCS Policies CS9, CS14 or CS17.

**Other matters**

*Traffic and safety*

90. I note the concerns raised by local residents, particularly concerning traffic, congestion and highway safety. I saw on my visit that local roads are already busy, especially in the peak periods, and the development now proposed would add more traffic to the network. However, as a percentage of the existing flows, the increase generated by 37 dwellings would be negligible, and the proposed design of the new junction on Swanwick Lane, including the proposed 'keep clear' road markings, would meet all of the Highway Authority's safety requirements. There are therefore no reasonable highway grounds for objection.
91. In addition, the replacement of the existing layby with a new off-street car park would undoubtedly be a safer arrangement for users of the children's play area,

as it would greatly reduce the potential for a small child to wander into the path of a moving vehicle. I appreciate that this might leave some residents looking for alternative overnight parking, but it seems to me that this is outweighed by the safety benefit.

92. A suitable junction design and the early provision of the car park can be secured by conditions.

*Residential amenity*

93. I accept that the proposed development would block views of the river from some neighbouring properties, and I fully understand what this would mean to their owners. However, the loss of private views weighs less heavily as a planning consideration than the other issues that have been identified. There is no reason to doubt that existing occupiers can be adequately protected from more serious impacts such as overlooking, overshadowing or overbearing effects, at the detailed stage. The development therefore need not unacceptably harm living conditions at any existing property.

*Local facilities*

94. I note the comments made about the adequacy of some local facilities. But on my tour of the area, I saw that the site is within reasonably easy reach of schools, doctors, shops and a variety of local employment. Public transport is available by bus and train, at most times of day, and the Highway Authority states that it intends to improve pedestrian and cycle facilities on the A27.
95. I accept that there may be pressures on some local services, especially doctors and schools, but at a time when population numbers are increasing throughout the region, the same is true in many areas, and ultimately the task of adapting to meet future needs is one for the providers of those services. In the present case, this would not be a proper reason to refuse planning permission.

*Wildlife*

96. The various observations relating to wildlife are noted, but the survey evidence shows that the site has limited habitat value. This can be adequately protected and enhanced by condition.

*The legal undertaking*

97. The undertaking provides for a financial contribution of £6,364.00 towards the mitigation of off-site ecological impacts. The need for such a contribution arises because of the development's proximity to designated sites of ecological importance, and the consequent potential cumulative impacts of developments in the area on protected bird species. A framework for such contributions has been agreed between the PUSH authorities under the Solent Disturbance and Mitigation Project, and a specific programme of mitigation works has been identified, focused on the Alver Valley Country Park, in the Borough of Gosport.
98. The undertaking also provides for the setting up of a management company to maintain the development, and for the carrying out of a woodland management plan and other landscaping works, in accordance with details to be approved by the Council.

99. From the information provided, I am satisfied that all of the obligations are necessary, and are properly related to the proposed development, so as to meet the relevant policy and legal tests<sup>11</sup>.
100. I note that a Community Infrastructure Levy (CIL) charging Schedule is in place in the borough, and that the proposed development would also be required to contribute to local infrastructure provision through a CIL payment.

### **Conditions**

101. I have considered the conditions suggested by the Council, and those others discussed at the inquiry, in the light of the tests in NPPF paragraph 206. If permission is granted, I agree that most of these conditions would be needed in one form or another, although with some re-ordering and rewording, to improve their clarity, precision and effectiveness. The conditions that I consider should be imposed on any permission in this case are set out in the attached Schedule.

#### *Conditions to be imposed*

102. Conditions Nos 1 – 3 set out the requirements as to reserved matters and the time limits for submission and commencement. In the light of my earlier conclusions regarding the Borough's housing land supply, I have reduced the time limits to less than the normal statutory periods, to better reflect the urgency of the need. I note the Council's suggested additional wording, but I see no evidence to support a limit of 3 storeys; nor any need for these conditions to refer to the mix of dwelling types.
103. Condition 4 sets out the requirements with regard to affordable housing, which is needed to comply with FCS Policy CS18. I agree that the condition should specify the number of affordable units, and their tenures, but the suggested detailed breakdown as to numbers of bedrooms and floorspaces seems to me over-prescriptive at this outline stage. The suggested contingency provisions relating to right-to-buy, staircasing, mortgagee in possession, and other exceptions, seem to me too imprecise for inclusion in a condition, and I have therefore omitted these.
104. Conditions 5 and 6 set out the requirements for pre-commencement investigations relating to archaeology and contamination. These are necessary to protect the historic environment and the health of future occupiers respectively.
105. Conditions 7 and 8 are aimed at securing the implementation and on-going management of high-quality landscaping, and Nos 9 – 13 provide for the protection of existing trees and hedges. All of these are needed to ensure a good standard of development.
106. Conditions 14 – 20 set out the requirements as to highway works, both off and on-site, and Nos 21 and 22 secure the provision of the proposed play area car park. All of these are necessary in the interests of highway safety and for the convenience of road users. In Condition 22, I have increased the period from 6 to 8 weeks, to ensure that compliance can be achieved.

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<sup>11</sup> In: (i) Regulation 122 of the Community Infrastructure Levy Regulations 2010; and (ii) NPPF paragraph 204

107. Condition 23 requires adequate measures to mitigate noise from road traffic and nearby commercial uses, as defined in the submitted noise report; and Condition 24 seeks the provision of suitable facilities for household refuse. Both are needed to ensure a satisfactory residential environment.
108. Condition 25 calls for ecological mitigation and enhancement, in order to minimise any impacts on biodiversity and secure a net gain in accordance with NPPF paragraph 109. The condition requires further details to be submitted and approved, since the existing ecological report contains limited detail as to any recommended measures.
109. Condition 26 requires compliance with the Code for Sustainable Homes, in accordance with FCS Policy CS15.

*Rejected conditions*

110. Having carefully considered all of the other suggested conditions, I find that none of these meet the relevant tests. The Council's proposed requirement for the development to be carried out only in accordance with the submitted illustrative plan would not be reasonable, because layout is a reserved matter, and in any event there is no evidence to suggest that no other form of layout would be acceptable. Equally, the appellants' tentative suggestion of an exclusion area in the southern corner would not be a reasonable condition, since it has not been shown that there is any overriding objection to development in that part of the site.
111. The proposed conditions relating to materials, car parking and cycle storage are unnecessary, as these details can be dealt with at the reserved matters stage. Lighting is adequately covered in the revised on-site highway works condition that I have included at Condition 20, and thus does not need an additional separate condition.
112. With regard to the proposed construction method statement and controls on the hours of construction work, powers are available to prevent obstruction of the public highway, or the deposit of mud, and to prevent nuisance to adjoining occupiers, under other legislation. There are no particular circumstances here that make it necessary to duplicate those controls through planning conditions.

**CONCLUSIONS**

113. The proposed development of 37 dwellings would be outside the settlement boundary defined in the FBLP, and would thus conflict with FCS Policy CS14. However, given the lack of a demonstrated 5-year housing supply, the settlement boundary must be regarded as out of date, and the weight that can be afforded to Policy CS14 is reduced accordingly.
114. Despite its designation on the FBLP proposals map, the appeal site does not appear in reality as an integral part of the countryside, nor of the coast, and does not contribute significantly to the character or appearance of those areas. Neither does the site, in its undeveloped state, contribute positively to the character or setting of the settlement. Consequently, no material conflicts arise in respect of any of the policies that are concerned with protecting these areas, in either the development plan or the NPPF.

115. The site lies within the Western Wards area, which is identified in Policies CS6 and CS9 as one of the District's preferred locations for housing development. The local infrastructure and services are adequate to serve a development on the scale now proposed.
116. So, on the one hand, the development would result in the loss of an undeveloped, but otherwise unremarkable, parcel of open land. On the other hand, the proposed development would make a valuable contribution to meeting local housing needs, including affordable housing provision. There would also be a modest public benefit in the provision of the proposed car park to serve the existing play area. And in addition there would be the opportunity, at the reserved matters stage, for the Council to seek to secure a high-quality scheme, which could make better use of the land, and enhance the townscape.
117. In view of the unmet housing need, the benefit of adding 37 new dwellings to the local housing supply commands substantial weight. Together with the car park and the potential for townscape enhancement, it seems to me that the conflict with Policy CS14 and any other harm arising from the development would be significantly and demonstrably outweighed by these benefits.
118. Having regard to the three 'dimensions' of sustainable development, and all of the relevant policies contained in the NPPF, I conclude that the development now proposed would constitute the kind of sustainable development that the NPPF seeks to encourage and promote. I have taken into account all the other matters raised, but none alters this conclusion.
119. The appeal is therefore allowed.

*John Felgate*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

The planning permission to which this decision relates is granted subject to the following conditions (numbered 1 - 26):

### *Reserved matters and time limits*

- 1) No development shall be commenced until details of the appearance, landscaping, layout, and scale (hereinafter called "the *reserved matters*") of the proposed development have been submitted to the local planning authority and approved in writing. The development shall be carried out in accordance with the details thus approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
- 3) The development shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.

### *Affordable housing*

- 4) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to the local planning authority and approved in writing. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the NPPF. The scheme shall provide for 15 units of affordable housing, including 10 for 'affordable rented' tenure, and 5 for shared ownership. The affordable housing scheme shall also contain details of:
  - (i) the proposed mix of types and sizes of the affordable housing units, and their location within the site;
  - (ii) the proposed timing of the construction of the affordable units, in relation to the occupancy of the market housing;
  - (iii) the proposed arrangements for the transfer of the affordable housing to an affordable housing provider;
  - (iv) the arrangements to ensure affordability for the initial and subsequent occupiers in perpetuity; and
  - (v) the occupancy criteria and the means by which such criteria are to be enforced.

### *Archaeology*

- 5) No development shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme of investigation which has been submitted to the local planning authority and approved in writing.

### *Contamination*

- 6) No development shall take place until the site has been investigated for soil contamination, and any such contamination found to be present has been removed or rendered harmless, in accordance with a scheme to be submitted to the local planning authority and approved in writing. In addition:
  - (i) If, during the course of construction, any contamination is found which has not been identified previously, no further work shall take place until that contamination has been removed or rendered harmless, in accordance with additional measures to be submitted to and approved in writing by the local planning authority; and
  - (ii) If any contamination has been found to be present at any stage, either before or during construction, no part of the proposed development shall be brought into use until a verification report has been submitted to and approved by the local planning authority, showing that all such contamination has been treated, and the site

rendered safe for occupation, in accordance with the original contamination scheme and any further measures subsequently agreed.

*Landscaping*

- 7) The landscaping details to be approved under Condition 1 shall include details of all planting and seeding, the surfacing of all hard surfaced areas, all boundary treatments, all re-grading or re-contouring of the land, and any signage and street furniture. The landscaping works thus approved shall be implemented in accordance with the approved details, and in accordance with the timescale specified in the submitted legal undertaking.
- 8) The landscaping details to be approved under Condition 1 shall also include a landscape management plan. Following the implementation of the landscaping works, all of the landscaped areas shall be maintained thereafter in accordance with the details thus approved. Any tree or plant forming part of the approved landscaping scheme which dies, or becomes seriously damaged or diseased, or is removed for any reason, within a period of 5 years after planting, shall be replaced during the next planting season with others of similar size and species.

*Existing trees and hedgerows*

- 9) No development shall take place until a tree and hedgerow protection scheme has been submitted to the local planning authority and approved in writing. The scheme shall contain details of proposed measures for the protection and retention of all of the existing trees and hedgerows on and adjacent to the site during construction. The scheme shall also identify a suitably qualified Arboricultural Supervisor.
- 10) The measures to be approved under Condition 9 shall include protective fencing, and such fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought on to the site, and shall remain in place until the latter have been removed from the site and the development has been completed. Nothing shall be stored or placed in any area fenced in accordance with this condition, and the ground levels within these areas shall not be altered, nor shall any excavation be made, except with the written consent of the local planning authority.
- 11) No tree or hedgerow on the site shall at any time be cut down, uprooted or destroyed, nor be topped, lopped or pruned, other than in accordance with details approved within either the tree and hedgerow protection scheme (under Condition 9) or the landscape management plan (under Condition 8). Notwithstanding this requirement, in the event that any existing tree or hedgerow dies or is lost for any reason, within a period of 5 years from the date of completion of the development, replacement planting shall be carried out in accordance with details to be approved in writing by the local planning authority.
- 12) All works approved under Conditions 9 - 11 shall be carried out in accordance with BS 5837:2012, and shall be overseen by the approved Arboricultural Supervisor.
- 13) The layout details to be submitted under Condition 1 shall include provision for a 5m-wide woodland buffer zone alongside the whole length of the tree belt on the site's north-western boundary, as shown on Plan No PP1220-101-00 (Revision. P2). Within this buffer zone, the land shall be used only for communal purposes, including landscaping, open space, and roadways, and no part of the buffer zone shall be included within the curtilage of any dwelling.

*Access and off-site highway works*

- 14) The proposed new access to the site and related off-site highway works shall be laid out in accordance with the submitted details shown on Plan No. A083488\_PR\_01. These works shall include the removal of the existing layby in Swanwick Lane, the

realignment of the footway alongside it, and the provision of visibility splays of 2.4m x 65m in both directions, all as shown on this approved plan.

- 15) In addition, the following off-site works are to be carried out, in accordance with details to be submitted to the local planning authority and approved in writing:
  - (i) the making good of the redundant footway and layby areas; and
  - (ii) the permanent closure of the existing site access to the north of the play area.
- 16) No development (other than that required to comply with this condition) shall be carried out until the existing layby has been closed, and the site access has been constructed to at least binder course level, including the first 10m of the access road.
- 17) No development or works of any kind (including those specified in condition 16), shall be carried out until a timetable for the full completion of all the access and off-site highway works required under Conditions 14 - 16 has been submitted to the local planning authority and approved in writing. These works shall thereafter be carried out and completed in accordance with the timetable thus approved.
- 18) No new dwelling shall be occupied until 'keep clear' road markings have been provided in Swanwick Lane, in accordance with details to be submitted to the local planning authority and approved in writing.
- 19) Once the visibility splays referred to in Condition 14 have been created, clear visibility within the splay areas shall be maintained thereafter, above a height of 600mm from ground level.

*On-site highway works*

- 20) The details to be submitted under Condition 1 above shall include details of all necessary on-site highway infrastructure, including access roads, turning areas, footways, street lighting and highway drainage, together with a timetable for the implementation of these on-site works. No dwelling shall be occupied until the on-site highway infrastructure serving that unit has been provided, in accordance with the approved details, and the relevant roads and footways finished to at least binder course level. These on-site highway works shall thereafter be fully completed in accordance with the approved timetable.

*Play area car park*

- 21) The layout details to be submitted under Condition 1.1 above shall include details of the proposed new car park for the existing play area adjacent to the site. The car park shall provide a minimum of 6 spaces, and shall be laid out in accordance with the details thus approved.
- 22) The proposed car park to be provided under Condition 21 shall be completed and made available for public use in connection with the play area, no later than 8 weeks from the date when the existing layby is closed. Thereafter, the car park shall be retained and kept available for its stated use.

*Noise mitigation*

- 23) No construction work on any new dwelling shall be commenced until a scheme of noise mitigation, including details of the proposed glazing and ventilation systems, has been submitted to the local planning authority and approved in writing. The submitted details shall demonstrate that the new dwellings are designed not to exceed the following maximum internal noise levels:

Daytime average (all habitable rooms):	35 dB $L_{Aeq}$
Night-time average (bedrooms):	30 dB $L_{Aeq}$
Night-time maximum (bedrooms):	45 dB $L_{Amax}$

*Refuse storage*

- 24) The details to be submitted for approval under Condition 1 shall include details of the provision to be made for the storage of household refuse for each proposed dwelling. No dwelling shall be occupied until the approved provision has been made available for use by the occupiers of that dwelling. Thereafter, the approved refuse storage provisions shall be retained in accordance with the details thus approved.

*Ecological mitigation*

- 25) No development shall take place until a detailed scheme of ecological mitigation and enhancement measures has been submitted to the local planning authority and approved in writing. The scheme shall include a timetable for the implementation of the necessary works, and those works shall be carried out in accordance with the scheme and timetable thus approved.

*Code for Sustainable Homes*

- 26) The proposed dwellings shall achieve Level 4 of the Code for Sustainable Homes. No new dwelling shall be occupied until a final Code Certificate has been issued for that dwelling, certifying that Code Level 4 has been achieved.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Ground, of Counsel      Instructed by the Solicitor to the Council

He called:

Mr Stephen Jupp, BA(Hons) LLM MRTPI	Planning consultant
Mr Peter Home, MA(Oxf) MRTPI	Adams Hendry

### FOR THE APPELLANT:

Mr Christopher Boyle, QC      Instructed by WYG Planning

He called:

Mr Stephen Brown, BSc(Hons) DipTP MRTPI	Woolf Bond Planning
Mr Duncan McInerney, BSc(Hons) MLD CMLI	The Environmental Dimension Partnership
Mr Martin Hawthorne, BSc(Hons) MRTPI	WYG Planning

### OTHER INTERESTED PERSONS:

Cllr Sean Woodward	Leader of Fareham BC and ward member for Sarisbury
Mr Jim Wood	Chairman, Burr ridge & Swanwick Residents' Association
Mr John Grover	Local resident
Mr Clive Nightingale	Local resident
Miss Sarah-Jane Moore	Local resident
Ms Suzanne Rosenbrier	Local resident (also speaking on behalf of Ms Kate Winkworth, local resident)
Mr Don Frost	Local resident

## **DOCUMENTS TABLED AT THE INQUIRY AND AFTERWARDS**

### **TABLED BY THE APPELLANTS**

- 1 Table: housing completions against requirement, 2006-14
- 2 Eastleigh Borough Local Plan examination: Inspector's preliminary report on housing needs and supply, 28 November 2014
- 3 Dartford BC v SoS and Landhold Capital Ltd: judgement dated 24 June 2014 [*2014 EWHC 2636 Admin*]
- 4 Photographs of the appeal site from the railway line
- 5 Photographs of the appeal site from Bridge Road, December 2014
- 6 Swanwick Marina – approved plan
- 7 Secretary of State's appeal decision – Droitwich Spa (APP/H1840/A/13/2199085)
- 8 Secretary of State's appeal decision – Ramsgate (APP/Z2260/A/14/2213265)
- 9 Appeal decision – Swanley (APP/G2245/A/13/2197478)
- 10 Bus timetables
- 11 Train timetables: Bursleden - Southampton
- 12 Train timetables: Bursleden - Portsmouth
- 13 Welborne strategic framework plan, annotated by Mr Hawthorne to show land not controlled by the promoters
- 14 Correspondence relating to screening direction for Welborne development
- 15 Executed unilateral undertaking, dated 9 December 2014
- 16 Appellants' suggested wording for a condition restricting development on part of the site, and related plans
- 17 Mr Boyle's closing submissions
- 17A Email dated 23 December 2014 in response to the Ministerial letter re SHMAs

### **TABLED BY THE COUNCIL**

- 18 Appeal decision – Storrington (APP/Z3825/A/13/2202943)
- 19 Appeal decision – Emsworth (APP/L3815/A/13/2198341)
- 20 Emails relating to various housing supply sites
- 21 Welborne – planning programme chart
- 22 The Solent Disturbance Mitigation Project Interim Framework – report to PUSH Joint Committee, 25 March 2014, and minutes
- 23 Mr Home's summary statement
- 24 Inspector's decision re land at Blaby (S62A/2014/0001)
- 25 Swanwick Marina – planning permission and officers' report
- 26 S Northants v SoS and Barwood Homes Ltd: judgement dated 10 March 2014 [*2014 EWHC 570 Admin*]
- 27 Mr Ground's closing submissions
- 27A Email dated 22 December 2014 relating to the Ministerial letter re SHMAs

### **TABLED BY THE OTHER PARTICIPANTS**

- 28 Cllr Woodward's statement
- 29 Mr Wood's statement
- 30 Mr Grover's statement
- 31 Mr Nightingale's statement
- 32 Miss Moore's statement
- 33 Ms Winkworth's written submission (presented by Ms Rosenbrier)
- 34 Aerial photograph dated 2013, tabled by Mr Grover

### **OTHER TABLED DOCUMENTS**

- 35 Statement of Common Ground on 5-year housing land supply
- 36 Extracts from Core Strategy 'interactive' proposals map
- 37 Proposed condition re affordable housing (tabled jointly)
- 38 Letter from the Minister of State for Housing and Planning, dated 19 December 2014, re Strategic Housing Market Assessments



## Appeal Decision

Inquiry held on 25 April 2017

Site visit made on 27 April 2017

by **S R G Baird BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 14 August 2017**

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**Appeal Ref: APP/A1720/W/16/3156344**

**Land north of Cranleigh Road and west of Wicor Primary School,  
Portchester, Fareham, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Persimmon Homes South Coast against the decision of Fareham Borough Council.
  - The application Ref P/15/0260/OA, dated 17 March 2015, was refused by notice dated 24 March 2016.
  - The development proposed is residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping on land north of Cranleigh Road and west of Wicor Primary School, Portchester, Fareham, Hampshire in accordance with the terms of the application, Ref P/15/0260/OA, dated 17 March 2015, subject to the conditions contained at Annex A of this decision.

### Preliminary Matters

2. The application was made in outline with all matters other than means of access reserved. The appellant and the local planning authority (lpa) confirmed that the drawings that comprise the planning application are Drawing Nos. LOC 1 Rev D – Location Plan and J-D1708.00 - Site Access Layout and Highway Improvements. The application plans are supported by 2 Illustrative Plans; Drawing Nos. 01 Rev W- Illustrative Site Plan and 2498-SK-04 Rev P3 – Indicative Landscape Strategy.
  3. The appellant has submitted a signed S106 Unilateral Undertaking (UU) providing for financial contributions towards: (a) mitigation in accordance with the Interim Solent Recreation Mitigation Partnership and (b) the approval and monitoring of a Travel Plan. In addition, the UU provides for the laying out of the public open space and that 40% of the dwellings would be affordable housing units.
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4. An application for an award of costs was made by Persimmon Homes South Coast against Fareham Borough Council. This application is the subject of a separate Decision.
5. Following the close of the inquiry, the Supreme Court issued a judgement<sup>1</sup> concerning the interpretation of paragraph 49 of the National Planning Policy Framework (Framework) and its relationship with Framework paragraph 14. The parties were given an opportunity to comment on the implications of this judgement for their cases. I have taken the judgement and the parties' comments into account in coming to my decision.

### **Main Issues**

6. These are:
  - (i.) whether the lpa can demonstrate a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land supply (HLS);
  - (ii.) the effect on the supply of Best and Most Versatile (B&MV) agricultural land; and
  - (iii.) the effect on the character and appearance of the area.

### **Reasons**

7. The development plan for the area includes the Core Strategy (CS) adopted in August 2011, the Local Plan Part 2: Development Sites and Policies adopted in June 2015 (LP2) and the Local Plan Part 3: The Welbourne Plan adopted in June 2015 (LP3). The lpa has commenced a Local Plan Review (LPR). It is anticipated that a draft Local Plan will be published for consultation in September 2017.

#### Issue 1 - Housing Land Supply

8. Framework paragraph 47 seeks to boost significantly the supply of housing. Lpas are enjoined to ensure that Local Plans meet the full, objectively assessed needs (OAN) for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. Lpas are to identify and update annually a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land against their housing requirements with an additional buffer of 5% or 20% where there has been a record of persistent under delivery of housing.
9. Here, the lpa's 5-year HLS calculation is based on the requirements of the CS, in particular Policy CS2, adopted in 2011. The CS has a plan period running from 2006 to 2026 and was produced in the context of the no longer extant regional strategy (The South-East Plan) and the then emerging South Hampshire Strategy (SHS), a non-statutory sub-regional plan produced by a consortium of several lpas.
10. Given the CS was adopted several months before the publication of the Framework and the CS housing requirement is largely based on the regional

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<sup>1</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).

strategy it is not a Framework compliant OAN. Although LPs 2 and 3 post-date the Framework, neither plan undertakes the identification of an OAN.

11. Given the above, and in light of the Navigator appeal decision<sup>2</sup>, the appellant submits that the starting point for calculating the HLS position should be based on the April 2016 Objectively Assessed Housing Need Update produced for the PUSH<sup>3</sup> authorities and the June 2016 PUSH Spatial Position Update. Both studies identify an OAN for Fareham that is materially higher than the CS housing requirement. The Ipa's position is that as LPs 2 and 3 have been found sound, and in light of PPG and Ministerial guidance on the use of SHMAs the housing requirement used to calculate the HLS is that contained in the CS. The Ipa's position is that until the LPR has been the subject of consultation, examination and adoption it is premature to use the PUSH OAN as the Borough's housing requirement.
12. PPG<sup>4</sup> advises that housing requirement figures in an up-to-date, adopted LP should be used as the starting point for calculating the 5-year HLS. PPG advises that considerable weight should be attached to the housing requirement figures in adopted LPs, which have successfully passed through the examination process, unless significant new evidence comes to light. However, PPG notes that evidence that dates back several years, such as that drawn from revoked regional strategies may not adequately reflect current needs. Thus, where evidence in a LP has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs i.e. SHMAs should be considered. That said the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints.
13. In December 2014, in a Ministerial letter, the Government clarified the policy position on emerging evidence in the form of SHMAs. The letter notes that the publication of a locally agreed assessment provides important new evidence and where appropriate will promote a revision of housing requirements in LPs. Lpas are expected to actively consider the new evidence over time and, where over a reasonable period they do not, Inspectors could reasonably question the approach to HLS. The Minister goes on to note that the outcome of a SHMA is untested and should not automatically be seen as a proxy for a final housing requirement in LPs or that it does not immediately or, in itself, invalidate housing numbers in an existing LP.
14. Here, the CS housing requirement is largely based on the no longer extant South East Plan, whose evidence base dates back to at least 2000. It is accepted that the CS does not contain a Framework compliant assessment of OAN and neither LPs 2 or 3 purport to set a housing requirement based on an OAN. The 2014 Ministerial guidance, in my view, restates the advice contained in the PPG and does not, in itself, preclude using up-to date SHMA information to assess the 5-year HLS.
15. The latest assessment of the "Policy-Off" OAN is contained in the April and June 2016 PUSH reports. These documents, as the introduction to the April

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<sup>2</sup> APP/A1720/A/14/2220031.

<sup>3</sup> Partnership for Urban South Hampshire.

<sup>4</sup> Paragraph 030 Ref ID: 3-030-20140306.

2016 report says, provide an analysis of housing need, which for Fareham is 420 dpa and 450 dpa respectively. These are substantial bodies of work that have been carried out in accordance with PPG guidance and at least one lpa has adopted the PUSH OAN calculated for its area as the basis for calculating the 5-year HLS. Here, the lpa acknowledges that the PUSH April 2016 OAN is the best evidence on the OAN for Fareham. I have taken careful note of the Minister's reference to lpa's considering the evidence over time and the reference to a reasonable period. Whilst the 2 reports are relatively recent, the lpa was aware during the Navigator appeal in December 2014 that the OAN identified in the 2014 South Hampshire SHMA was materially higher than the CS requirement. The decision in the Navigator appeal, which was not challenged, was predicated on an acceptance that the 2014 OAN provided a more suitable basis for a 5-year HLS calculation. In my experience it is rare in the extreme to conclude that the "Policy-Off" OAN is likely to reduce and it is clear from the April and June PUSH OAN reports that it continues to rise materially.

16. In line with PPG advice, it is, in my view, reasonable to conclude that the CS/LP 2 housing requirement is materially out-of-date and is derived on a basis that is inconsistent with the Framework. Thus, having regard to the case law<sup>5</sup> referred to, PPG and Framework policy, I consider that the 5-year HLS supply should be assessed on the basis of the PUSH April 2016 OAN.
17. Before dealing with the assessment of the 5-year HLS position, it is appropriate to deal with the matter of whether a 5 or 20% buffer should be added to the housing requirement. The lpa add a buffer to the housing requirement set out in the CS and LP 2, but not to the contribution to be made by the major urban extension at Welbourne (LP 3). The exclusion of Welbourne is predicated on the basis that it is a site specific allocation implementing a large-scale development proposal in the CS. I am not aware that there is support for such an approach either in the Framework or PPG and read on its face the Framework suggests that the buffer should be applied to the requirement as a whole. Accordingly, I consider the buffer figure should be applied to the requirement as a whole.
18. PPG<sup>6</sup> advises that the approach to identifying a record of persistent under delivery inevitably involves questions of judgement in order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing. The guidance indicates that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle. Here, I have details of net completions for the years 2006/07 to 2015/16 and these figures are not disputed by the lpa. For the period 2006/07 to 2010/11 the CS Policy CS2 requirement is applied and from then until 2015/16 the appellant applies the OAN figure taken from the PUSH April 2016 assessment of OAN. This is on the basis that the PUSH OAN figure is calculated from 2011. On this basis, completions only exceed the housing requirement in 2 out of the last 10 years. However, in the period up until 2014 when the then PUSH SHMA identified an OAN of 395 dpa the lpa could not have been expected to meet a

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<sup>5</sup> City and District of St Albans and The Queen (on the application of) Hunston Properties Limited Secretary of State for Communities and Local Government and anr [2103] EWCA Civ 1610 & Gallagher Homes Limited Lioncourt Homes Limited and Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin).

<sup>6</sup> Paragraph 035 Ref ID: 3-035-20140306.

need that it was not aware of. On this basis, allowing for peaks and troughs in the housing market it appears to me that there has been significant under-delivery in only 3 out of the last 10 years. On this basis, the application of a 20% buffer is not, in my view, justified.

19. Turning now to the 5-year HLS, I have considered 2 scenarios. One based on the requirements of CS Policy CS2, the lpa's preferred scenario, and one based on the up-to-date OAN figure. On the CS based approach, the 5-year housing land requirement is some 1,932 dwellings and the lpa claim a deliverable supply of some 2,003 dwellings, a surplus of some 71 units giving a 5.18-years' supply of housing land<sup>7</sup>. However, taking into account my conclusion on the appropriateness of excluding Welbourne from the buffer figure including it within the 5% allowance on the whole of the requirement would still return a HLS marginally above 5-years. The surplus would be reduced to some 13 units; a figure the lpa does not dispute.
20. The appellant disputes the deliverability of 9 of the LP 2 allocations, the deliverability of the brownfield site at Warsash Maritime Academy and the ability of the Welbourne allocation to deliver some 425 dwellings in years 4 and 5 of the HLS calculation. Using the lpa's CS housing requirement figure, the appellant's calculation gives a shortfall of some 1,965 units and estimates a 3.28-years' supply of housing land.
21. In coming to my conclusions on the deliverability of the disputed LP 2 sites, I have taken careful note of the lpa's submissions that the allocated sites were found "sound" by the Inspector when he examined LP 2 and that the sites continue to be listed in the Annual Monitoring Report (AMR). That said, LP 2 was examined in late 2014 based on a draft plan submitted for examination in mid-2014 and no doubt based on evidence obtained during 2013. The November 2016 AMR, other than containing a list, provides no detailed assessment of the sites. These assessments are, in my view, snapshots in time, which in the case of LP 2 were undertaken between 3 and 4 years ago. The deliverability of these sites needs to be kept under robust review and, given the paucity of information contained in the AMR, the value of these in making an up-to-date assessment of the HLS is limited.
22. To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable<sup>8</sup>. PPG<sup>9</sup> indicates that the 5-year HLS must be underpinned by "...robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out."
23. At the inquiry, the lpa provided an updated assessment of the deliverability of the disputed sites. However, the information provided on each site was limited and indeed the lpa's witness acknowledged that he did not have detailed information on the sites. The appellant's submission that the lpa's evidence regarding deliverability was based on, "...discussions with others about discussions with others" is an apt description. In my view, the lpa's evidence on deliverability relating to the LP 2 sites falls well below the

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<sup>7</sup> Table AB 1 submitted by the lpa at the inquiry.

<sup>8</sup> Footnote 11, National Planning Policy Framework.

<sup>9</sup> Paragraph 030 Ref. ID: 3-03020140306.

threshold set by PPG in that it is neither robust nor clearly and transparently set out. I have similar concerns regarding the inclusion within the 5-year supply of 100 units at Warsash Maritime Academy. Although this is a substantial site, the level of detail provided by the lpa on its deliverability is thin and lacks clarity and transparency.

24. LP 3 allocates some 371ha of mainly greenfield land at Welbourne to deliver some 6,000 dwellings and the lpa includes some 425 units within the 5-year supply in years 4 and 5. The delivery of Welbourne is a major undertaking and already the delivery of units has been pushed back in the programme. At one time the lpa considered that the delivery of dwellings would commence in 2016 with 120 units being completed by the end of the first quarter in 2017. Whilst I accept that significant pre-planning work has been carried out, a delivery partner will not be appointed until the beginning of 2018, major planning applications will have to be prepared and already, albeit as a precaution, the lpa is contemplating the use of compulsory purchase powers. Whilst I acknowledge the lpa's commitment to the delivery of Welbourne, on the evidence before me, it would appear that the potential to deliver a significant number of units towards the end of the 5-year period is optimistic.
25. In light of these findings, I am unable to safely conclude that at least 315 units, comprising the disputed list of LP 2 sites and the brownfield site at Warsash Maritime Academy, are capable of being considered as deliverable within the 5-year period. In this context, the lpa cannot demonstrate a 5-year supply of deliverable housing land.
26. In the scenario where the up-to-date OAN is used to derive the 5-year housing requirement and using the lpa's supply figures the lpa accepts that it could not demonstrate a 5-year HLS. At most, the evidence indicates that there would be a supply of some 3.6 years. However, given my conclusions regarding the deliverability of the disputed sites, I consider the HLS would be marginally over 2 years.
27. Drawing all of the above together, on whatever approach is used to identifying the 5-year housing land requirement, the lpa cannot demonstrate a 5-year supply of deliverable housing land. Indeed, on the balance of probabilities the available supply is well below the 5-year threshold.

#### Issue 2 – Best & Most Versatile Agricultural Land

28. The majority of the site is Grade 1 and the remainder Grade 2 agricultural land and is classed as best and most versatile land<sup>10</sup> (B&MV). CS Policy CS16 seeks to prevent the loss of B&MV. The Framework does not place a bar on the development of B&MV agricultural land. Framework paragraph 112 identifies that where development would involve the use of B&MV land, the economic and other benefits of that land should be taken into account and goes on to say where significant development is demonstrated to be necessary the use of poorer quality land should be used in preference to that of a higher quality i.e. apply a sequential approach. Here, given the appeal site extends to some 5.5ha, this proposal is not, in my view, a significant development where the sequential approach is engaged.

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<sup>10</sup> Annex 2, National Planning Policy Framework.

29. CS Policy CS16 was predicated on guidance contained in PPS7<sup>11</sup>, which the Secretary of State in his 2006 decision<sup>12</sup> described as containing a strong presumption against the loss of land of high agricultural value. PPS7 is no longer extant and CS Policy CS16, given that it says in a straightforward manner that it will prevent the loss of B&MV agricultural land without an opportunity to balance potential harm against potential benefits, is, in my view, inconsistent with the Framework and subject to the guidance contained at Framework paragraph 215.
30. The development would result in the permanent loss of B&MV agricultural land and as such would conflict with the provisions of CS Policy CS16. Accordingly, it must feature on the negative side of the planning balance, albeit the scale of the permanent loss would be limited.

#### Issue 3 – Character & Appearance

31. The appeal site abuts but lies outside the defined settlement boundary of Portchester. Whilst the development plan treats the area as countryside it is not subject to any landscape designation. Relevant development plan policies are CS Policies CS14 and 17 and LP 2 Policy DSP6. Policy CS14 indicates that development outside the defined settlement boundary will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Policy CS 17 seeks high quality design and layout and development should respond positively to and be respectful of key characteristics of the area including landscape. Except for certain categories of development, which do not apply in this case, LP 2 Policy DSP6 has a presumption against new residential development outside the defined settlement boundary. As such the proposal would be in conflict with LP 2 Policy DSP6.
32. Core Principles of the Framework seek to: ensure that planning secures high quality design ensuring that account is had to the different roles and characters of different areas recognising the intrinsic character and beauty of the countryside and a contribution to the conservation and enhancement of the natural environment. Framework paragraph 109 reiterates that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.
33. Both parties referred to various landscape character assessments. Of these the Fareham Borough Landscape Assessment examines the finest grain and is, in my view, the most relevant. In terms of landscape character, the appeal site sits on the eastern edge of Local Landscape Character Area (LCA) 12–Cams Wicor Coastal Fringe and to the south and east of LCAs 36 and 38 Urban Areas of Downend and Portchester South. LCA 12 is described as a discrete parcel of open landscape contained by the coast and the urban fringe. Whilst the main feature of this LCA is the extensive parkland and woodland of the Cam Hall Estate on its western edge the description notes that the LCA includes areas of open amenity landscape, fringe pasture and coastal industry to the east. The essential characteristics of the area are: an area of flat or gently undulating land occupied by mixed but open landscapes; a strong coastal influence and a strong fringe character with

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<sup>11</sup> Planning Policy Statement 7: Sustainable Development in Rural Areas.

<sup>12</sup> APP/A1720/A/05/1176455.

valuable areas of open space with attractive views out across Portsmouth Harbour and to Portsdown Hill and the Cams Hall Estate. The enhancement priorities for the area are to: maintain the open unbuilt character, particularly the estuary and coastal margins and improve the landscape quality of areas which lie between the settlement boundaries and the coast.

34. In terms of landscape and visual impact, whilst the appellant and the lpa use different terminology, in my view they both result in broadly the same outcome. Both parties agree that there would be substantial and adverse landscape and visual impacts. What is in dispute is the spatial extent over which these adverse effects would be experienced and whether the appeal site should be classed as a "valued" landscape.
35. In terms of visual impact, I had the opportunity to extensively walk the roads immediately around the site and the publicly accessible areas to the west. In addition, I visited Portsdown Hill and was able to assess the impact of the development from publically accessible vantage points.
36. Within the immediate area of the site from Cranleigh Road along its southern boundary and from Cranleigh Road southwards towards the junction with Gatehouse Road, the visual impact of the development to be at its highest, i.e. substantial and adverse. Further to the west along Cranleigh Road and from vantage points on the public footpaths and open space to the west, parts of the development, mainly the upper storeys and roof planes would be visible. However, the visual impact of the development would be significantly reduced by the degree of separation and the presence of existing tree/hedge planting and new boundary planting that could be conditioned as part of any permission. The magnitude of this impact would range from moderate to minor adverse depending on distance from the site.
37. Given there is no public access to the site and given the extent of intervening planting and industrial development on the foreshore there would be no material impact on views out over Portsmouth Harbour. In this context, the development would only have a limited adverse impact on views towards Portsdown Hill. The development would be in the foreground of the built-up area to the north and east and would not obscure publically available views of the hill from the east.
38. From public vantage points on Portsdown Hill there are sweeping panoramic views across Portchester and Portsmouth Harbour. Whilst the development would be noticeable, it would be seen as a modest extension of the existing built-up development to the north and east and against the backdrop of the housing area to the south of Cranleigh Road and mature planting beyond. The visual impact of the development would be mitigated by the above factors and the degree of separation from Portsdown Hill. Views of Portsmouth Harbour would not be interrupted or obscured and the wide sweep of the panoramic views would be maintained. In this context, the visual impact of the development from these vantage points would be minor.
39. Turning to whether the appeal site should be identified as a "valued" landscape and in the context of Framework paragraph 109 one whose enhanced planning status should be taken account of in the balancing exercise. I have taken careful note of the submissions made by interested persons and I was left in no doubt about their views on value. All landscapes are valued by someone at some time, particularly countryside

that is threatened by development. However, that does not necessarily make it a valued landscape for the purposes of Framework paragraph 49.

40. Although the Framework refers to valued landscapes it does not provide a definition of what type of landscape that might be. Framework paragraph 109 starts by reiterating the wider objective of enhancing the natural environment, which I take to mean the countryside in general and then it goes on to refer to valued landscapes, which must mean something more than just countryside in general. Case law<sup>13</sup> and Inspectors' decisions have identified that "valued" means something more than popular, such that a landscape was "valued" if it had physical attributes which took it out of the ordinary. In addition, the Guidelines for Landscape and Visual Impact Assessment (GLVIA3), provides at Box 5.1 a range of factors that can help in the identification of valued landscapes. These include landscape quality/condition; scenic quality; rarity, representativeness; conservation interests recreation value; perceptual aspects and associations. Whilst some of the factors go beyond the threshold identified by case law the Box 5.1 headings provide a useful context within which to assess "value". However, this is not a technical process and relies on subjective, albeit informed professional, judgement/experience.
41. Given the urbanising influence of built development on the northern eastern and southern boundaries and the generally overgrown nature of the site, I consider the landscape quality/condition of the site to be low/medium. For similar reasons, the site displays limited aesthetic appeal and it has low scenic value. Rarity and representativeness can be dealt with together. This is a landscape that does not contain rare landscape types or features. As such in terms of rarity and representativeness, I consider the value of the site/landscape to be low.
42. Given that the site has been neglected for some considerable time, the presence of the badger sett and the submissions regarding its ecology, it attracts a medium value for its conservation interest. There is no public access to the land other than it being a piece of a larger area of open land and has low recreational value and a medium value in terms of perceptual aspects. As far as I am aware the site /landscape has no cultural associations and as such attracts a low value. Reiterating again that this is not a technical exercise, drawing the Box 5.1 factors together, I consider the nature and value of the landscape of the appeal site to be ordinary/low. Combining this "score" with the case law requirement that the landscape should display physical attributes that takes it out of the ordinary, I conclude, that when looked at in the round the appeal site is not a Framework paragraph 109 valued landscape and does not benefit from the enhanced planning status that such an attribution would bring to the balancing exercise.
43. On this issue, the development would have a highly localised substantial and adverse impact on landscape character and visual impact. However, this impact would reduce with distance and for the most part in the wider area the landscape character and visual impact of the development would be

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<sup>13</sup> Stroud District Council v Secretary of State for Communities and Local Government [2015] EWHC 488 (Admin) & Cheshire East Borough Council v Secretary of State for communities and Local Government [2016] EWHC 694 (Admin).

minor moderate. That said the landscape and visual harm resulting from the development would conflict with CS Policies 14 and 17 and LP 2 Policy DSP6.

## **Other Considerations**

### Highways

44. I understand the concerns raised by residents particularly regarding the impact of traffic on congestion on the wider network and on Hatherley Crescent/Cornaway Lane at school dropping off/pick-up times. The planning application was accompanied by a robust Transport Assessment (TA) the scope of which was agreed with Hampshire County Council (HCC) as the Highway Authority (HA). In light of this study and its findings, the HA and the Ipa, subject to the imposition of appropriate planning conditions, have no objection to the proposal on highway safety or traffic generation grounds. I have no reason to disagree with those conclusions.
45. In terms of the impact on the wider area, the TA concludes that the capacity of junctions within the study area would not be significantly impacted upon and that the estimated marginal increases in queue lengths would not significantly impact on the operation of the highway network. Congestion occurring at school drop off and pick-up times is restricted to short periods of the day and occurs only on weekdays during term time. Given the location of the site directly abutting the school, the development would be unlikely to generate additional vehicular traffic to and from the school. In my experience, additional traffic generated by the development would only likely to have an impact during the short morning drop-off window. These impacts are not a reason to withhold permission.

### Ecology

46. The site is located some 350m from the Portsmouth Harbour Site of Special Scientific Interest (SSSI) which forms part of the wider Portsmouth Harbour Special Protection Area (SPA) and Ramsar Site. The appellant submitted ecological appraisals and produced an Ecological Construction and Management Plan. Given the proximity of the site to the national and internally designated sites referred to above, there is potential for the development to affect the interest features for which they were designated.
47. The appellant submitted to the Ipa a Habitat Regulations Assessment (HRA), which has been assessed by Natural England (NE). Based on what I consider to be a robust study, the HRA concludes that, having regard to measures that could be built-into the scheme and a financial contribution to the Solent Recreation and Mitigation Partnership, significant effects are unlikely to occur either alone or in combination on the interest features of the SPA and Ramsar. In light of these finding, and similar to the conclusion reached by NE, I conclude that an appropriate assessment under the regulations<sup>14</sup> is not required. Similarly, subject to the development being carried out in accordance with the details submitted with the application, NE indicates that the development would not damage or destroy the interest features for which the Portsmouth Harbour SSSI has been notified. Again, I have no reason to disagree with that conclusion.

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<sup>14</sup> The Conservation of Habitats and Species Regulations 2010 (As Amended).

48. There is an active badger sett within the site, which the appellant proposes to relocate within the area of public open space to the west. Badgers and their setts are protected by legislation<sup>15</sup>. Whilst the lpa has no objection to the relocation, the developer would require a separate licence from NE to remove the badgers. Whilst I note the concerns raised regarding the efficacy of artificial badger setts, they are, in my experience, in common usage and successful. I have no reason in this case to conclude there would be unacceptable harm or loss.
49. From the representations made both orally and in writing, I am in no doubt that the appeal site is highly regarded by local residents and the adjacent primary school as an ecological resource. The school's activities in introducing its pupils to the natural world are substantial and nationally recognised. Although the appeal site is privately owned and there is no public access to it, I recognise that the school views the site as a resource and an indirect source for the wildlife that inhabits the school site. Clearly whilst there would be some loss of habitat, this relates to many species that are common and widespread. The proposed area of public open space albeit it would be divorced from the school grounds by a housing estate, would be publicly available and could be laid out and managed as an improved ecological resource. Moreover, the tending and maturing of private gardens does provide a range of diverse habitats for a wide range of species. Whilst not a direct replacement the variety of habitats provided by private gardens would mitigate any impact on local ecology.
50. Drawing all of the above together, I conclude that the proposed development would not have a materially unacceptable effect on local ecology.

#### Education and Health

51. The development would generate a demand for 31 primary school places and 22 secondary school places. Research by the appellant identifies that the 5 infant/junior schools in Portchester are full. The Northern Infant school has recently been expanded and the Northern Junior School has a proposal to expand in 2019. HCC as the local education authority (LEA) indicates that the local secondary school has spaces available to meet the needs of the development. Whilst there is pressure on local primary schools, the appellant's submission that some of the existing school places are taken up by pupils from out of the school planning area, which could be used by local children, is not disputed by the lpa. There is no objection from the lpa or LEA on the grounds that the proposal would result in unacceptable pressure on local education infrastructure. I have no reason to disagree.
52. Evidence submitted by the appellant indicates that all primary healthcare centres within some 2 miles of the site are currently accepting patients. Whilst there were submissions that appointments are not easy to obtain, this is not a local problem and is something that occurs nationwide. There is no objection from the local providing body for primary care or the lpa.

#### Benefits

53. The proposed development would deliver economic, social and environmental benefits. Chief amongst these are that the proposal would

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<sup>15</sup> Protection of Badgers Act 1992.

deliver up to 120 homes including up to 48 affordable units. Economic benefits that would flow from the application include those arising from employment during the development phase; a New Homes Bonus payment and increased Council Tax revenues. When undertaking the planning balance factors such as these are generally held to be benefits of development albeit they are benefits that would occur from most developments.

#### S106 Undertaking

54. Framework paragraph 204 and CIL Regulation 122 say that Planning Obligations should only be sought and weight attached to their provisions where they meet all of the following tests. These are: they are necessary to make the development acceptable in planning terms; they are directly related to the development; and they are fairly and reasonably related in scale and kind to the development.
55. NE's lack of objection to the development is based on the developer making a contribution to the implementation of the Solent Recreation Mitigation Scheme. The purpose of the contribution is to mitigate disturbance of the Portsmouth Harbour SSSI and the wider Portsmouth Harbour Special SPA and Ramsar Site. The UU provides a mechanism for the provision of affordable housing required by development plan policy and the provision and retention of the public open space. These obligations are necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, in this respect, the UU is consistent with the guidance at Framework paragraph 204 and Regulations 122 of the CIL Regulations and where appropriate, I have attached weight to them in coming to my conclusion
56. The UU provides for (i) the submission of a Full Travel Plan; (ii) the payment of £5,750 to Hampshire County Council made up of £750 towards the cost of approving a Full Travel Plan and £5,000 to monitor compliance with it; (iii) the appointment of a Travel Plan Coordinator and (iv) a Travel Plan Bond.
57. The submission of a Travel Plan is a matter that could be dealt with by the imposition of an appropriate condition. Here, the only explanation I have for the monitoring fees is that *"it has been assessed based on the highway authority's experience with regards to monitoring such developments and is justified to ensure that the modal targets within the Travel Plan area achieved and if not there are "punitive" measures within the travel plan that can be instigated to endeavour to achieve the desired modal targets. The monitoring process ensures this check."*
58. The test contained within the Framework and CIL Regulation 122 i.e. "necessary to make the development acceptable in planning terms" is a high threshold in that the obligation has to be necessary and not merely desirable. Moreover, there is nothing in the Planning Acts, the CIL Regulations, the Framework or PPG that suggest that an authority could or should claim monitoring fees as part of a planning obligation. The monitoring of the Travel Plan is, in my view, one of the functions of the County Council. Despite my request for supporting evidence, I conclude that

in the absence of a full justification supported by evidence<sup>16</sup> the payment of a monitoring fee and the provision of a Travel Plan Bond are unnecessary to make the development acceptable in planning terms nor am I in a position to conclude that the requested contribution and Bond are fair and reasonably related in scale and kind to the development. For these reasons, I consider the requested contribution does not accord with the tests set out in the Framework and CIL Regulation 122 and I have not taken it into account in coming to my decision.

### **The Planning Balance**

59. The starting point is that S38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 requires that decisions on applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
60. The site is located outside the settlement boundary of Portchester and does not fall within any of the categories of development that may be permitted by LP Policy DSP6; as such the proposal is in conflict with this policy. Both parties refer to CS Policy CS11, which refers to development within the settlement boundaries of Portchester being permitted. Given the specific nature of this policy and the location of the site outside the settlement boundary, I consider this policy is not relevant to the overall planning balance. I have concluded that the proposed development would have an adverse impact on landscape character and a substantial adverse visual amenity albeit that impact would be highly localised. As such the proposal would be in conflict with CS Policies CS14 and CS17. The proposal would result in the loss of B&MV and would be in conflict with CS Policy CS16.
61. Paragraph 2 of the Framework confirms that it is a material consideration in planning decisions. The fourth bullet point of Framework paragraph 14 has 2 limbs. The first limb indicates that where the development plan is absent, silent or relevant policies are out-of-date planning permission should be granted unless 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. The second limb indicates that development proposals should be granted unless or specific policies in the Framework indicate development should be restricted. Framework paragraph 49 says that relevant policies for the supply of housing should not be considered up-to-date, if the lpa cannot show a 5-year supply of deliverable housing sites. Framework paragraph 215 indicates that due weight should be given to relevant policies in existing plans according to their consistency with the Framework.
62. In relation to housing land supply, the lpa cannot demonstrate a 5-year supply of deliverable housing sites. In this context, the decision of the Supreme Court<sup>17</sup> indicates that such a shortfall triggers the fourth bullet point of Framework paragraph 14. In this case, based on the evidence before me it is only the first limb of the fourth bullet point that is engaged.

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<sup>16</sup> Planning Policy Guidance, Paragraph: 004 Reference ID: 23b-004-20150326.

<sup>17</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin) .

The appellant and the Ipa agree that CS Policy CS14 and LP 2 Policy DSP6 are not relevant policies for the supply of housing and I have no reason to disagree. Given, the nature of CS Policy CS 17 – first bullet point, I consider this is not a relevant policy for the supply of housing either.

63. Based on the evidence before me the housing land supply stands at just over 2-years resulting in a significant shortfall. I acknowledge that the Ipa is seeking to address its ongoing housing requirements through the preparation of the Local Plan Review and the promotion of the sustainable Urban Extension at Welbourne. That said, a consultation draft of the Local Plan Review is not anticipated to be published until September 2017 and I would not expect that plan to be adopted before mid-2018 at the earliest. Welbourne is the subject of an adopted LP and will be progressed through the appointment of a development partner who will not be identified until early 2018. Once identified the Ipa/development partner will subsequently need to involve themselves in land acquisition through negotiation and/or compulsory purchase and to submit/determine major planning applications. On all the evidence before me, it appears to me, given the scale of the development and the constraints involved, which include the provision of a new junction on the M27 (albeit up to 500 units may be permitted before the new junction is required), the potential for significant development within the 5-year period is limited. In these circumstances, the material shortfall in housing land supply will continue and the backlog of housing required to meet local needs will grow.
64. As far as I am aware there are no constraints that would delay this development and as such granting permission would, in line with the clear objectives spelt out at Framework paragraph 47, provide for a significant and material boost/contribution to meeting housing needs within the District, particularly affordable housing. Drawing all this together, I consider that the contribution the appeal site could make to meeting the District's housing needs attracts very substantial weight in the planning balance.
65. Whilst, the objectives of CS Policy C14, CS 17 and LP 2 Policy DSP6 in seeking to protect the countryside from development are consistent with the fifth Core Principle identified at Framework paragraph 17, I conclude in this case that the limited harm in terms of the loss of B&MV agricultural land and landscape character and visual impact would not significantly and demonstrably outweigh the benefits of this scheme in making a material contribution to the significant shortfall in housing land. Accordingly, having regard to Framework paragraph 14, I consider the proposed development represents sustainable development.
66. In coming to the above conclusion, I have had regard to the appeal decision issued by the Secretary of State in 2006. However, I consider this decision was issued in the context of a materially different development plan context. Then, although located in countryside, the area was also identified in the development plan as a Local Gap and a Coastal Zone. Here local policy indicated that development that would physically or visually diminish undeveloped land within the gap would not be permitted. Now, although still defined for planning purposes as countryside, the open area to the west and south of the built-up area of Portchester is no longer classed as a Local Gap or within the Coastal Zone.

67. For the reasons, given above and having regard to all other considerations, I conclude that the appeal should be allowed.

### **Planning Conditions**

68. For the avoidance of doubt and in the interests of proper planning and I have imposed a condition relating to the specification of plans (4)<sup>18</sup>. Conditions relating the submission of details and the implementation of approved schemes in relation to: the construction of the estate roads (6); boundary treatment (7); archaeological investigations (8); foul and surface water drainage (9); an arboricultural assessment (10); existing and finished ground level and finished floor levels (11); the prevention of mud on the highway (12) construction traffic access (13) and the submission of a Travel Plan (14) are reasonable and necessary in the interests of the appearance of the area, highway safety, the identification and preservation of potential archaeology and the protection neighbours' living conditions. Conditions relating the prevention of fires (15), hours of operation (16); the treatment of hard surfaces (17) and a restriction on eaves height (20) are reasonable and necessary in the interests of appearance and neighbours' living conditions. In the interests of the appearance of the area, a condition relating to landscape implementation and maintenance (18) is necessary. In the interests of ecology, a condition requiring the development to be carried out in accordance with the submitted Ecological Construction and Management Plan (19) is necessary. Where necessary and in the interests of precision and enforceability I have reworded the suggested conditions.
69. At the inquiry, the lpa and the appellant agreed that the suggested conditions relating to boundary treatment, access details, external lighting/floodlighting and the insertion of roof lights were matters that were covered by the submitted plans, were unnecessary , duplicated other conditions or were matters that could be dealt with as part of the reserved matters submissions. I have not imposed these conditions.

*George Baird*  
Inspector

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<sup>18</sup> Numbers relate to those in the Schedule of Conditions.

## **Annex A**

### **SCHEDULE OF CONDITIONS**

1. Details of the appearance, scale, layout and landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
4. The development shall be carried out in accordance with the following approved drawings: Location Plan - Drawing 6132 LOC Rev D and J-D1708.00 Site access Layout and Highway Improvements.
5. No housing development including gardens and roads shall take place to the west of the hedgerow running north to south through the site as shown on Drawing No. 01 Rev W- Illustrative Site Plan.
6. No development shall commence until details of the width, alignment, gradient and type of construction proposed for any roads, footways and/or access/accesses, to include all relevant horizontal and longitudinal cross sections showing the existing and proposed ground levels, together with details of street lighting (where appropriate), the method of disposing of surface water, and details of a programme for the making up of roads and footways have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
7. No development shall commence until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwellings are first occupied or in accordance with a timetable agreed in writing with the local planning authority and shall thereafter be retained at all times.
8. No development shall commence until a preliminary archaeological survey establishing the location, extent, nature and significance of archaeological remains on the site including a mitigation strategy, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the agreed mitigation strategy.
9. No development shall commence on site until details of sewerage and surface water drainage works to serve the development hereby permitted have been submitted to and approved in writing by the local planning authority. None of the dwellings shall be occupied until the drainage works have been completed in accordance with the approved details.
10. No development shall commence until an Arboricultural Impact Assessment Report and Method Statement for tree/hedgerow protection has been

- submitted to and approved in writing by the local planning authority and the approved scheme implemented. The tree/hedgerow protection shall be retained throughout the development period until such time as all equipment, machinery and surplus materials have been removed from the site.
11. No development shall commence until details of the internal finished floor levels of all of the proposed buildings in relation to the existing and finished ground levels on the site and the adjacent land have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  12. No development shall commence until details of the measures to be taken to prevent spoil and mud being deposited on the public highway by vehicles leaving the site during the construction works have been submitted to and approved in writing by the local planning authority. The approved measures shall be fully implemented upon the commencement of development and shall be retained for the duration of construction of the development.
  13. No development shall commence until the local planning authority have approved details of how construction traffic will access the site, how provision is to be made on site for the parking and turning of operatives and delivery vehicles and the areas to be used for the storage of building materials, plant, excavated materials and huts associated with the implementation of the permitted development. The areas and facilities approved in pursuance to this condition shall be made available before construction works commence on site shall thereafter be kept available at all times during the construction period, unless otherwise agreed in writing with the local planning authority.
  14. Prior to the commencement of construction works a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall include arrangements for monitoring and effective enforcement. Development shall be carried out in accordance with the approved details.
  15. No materials obtained from site clearance or from construction works shall be burnt on the site.
  16. No work relating to the construction of any of the development hereby permitted (including works of demolition or preparation prior to operations) shall take place before the hours of 0800 or after 1800 hours Monday to Friday, before the hours of 0800 or after 1300 hours on Saturdays or at all on Sundays or recognised public holidays, unless otherwise first agreed in writing with the local planning authority.
  17. No development shall proceed beyond damp proof course level until details of the finished treatment of all areas to be hard surfaced have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and the hard surfaced areas subsequently retained as constructed.
  18. The landscaping scheme submitted under Condition 1 above, shall be implemented within the first planting season following the commencement of the development or as otherwise agreed in writing with the local planning

authority and shall be maintained in accordance with the agreed schedule. Any trees or plants which, within a period of 5 years from first planting, are removed die or become seriously damaged or defective, shall be replaced, within the next available planting season, with others of the same species, size and number as originally approved.

19. The development shall be carried out strictly in accordance with the Ecological Construction and Management Plan dated August 2016 and updated November 2016.
20. The dwellings shall not exceed two-storey eaves height.

## **ANNEX B**

### **APPEARANCES**

#### FOR THE APPELLANT

Christopher Boyle QC, instructed by the Bryan Jezepeh Consultancy.

He called:

Steven Brown BSc (Hons) Dip TP, MRTPI  
Woolf Bond Planning.

Liz Bryant MA, CMLI  
Allen Pyke Associates.

Michael Knappett BSc (Hons), BTP, MRTPI.  
Bryan Jezepeh Consultancy.

#### FOR THE LOCAL PLANNING AUTHORITY

Paul Stinchcombe QC, instructed by Fareham Borough Council

He called:

Andy Blaxland  
Director, Adams Hendry Consulting Limited.

Nicola Brown BA (Hons), BLand Arch, CertUD, CMLI  
Director, Huskisson Brown.

#### INTERESTED PERSONS

Mr Mullen.  
Mrs Fox.  
Ms Sawyer.  
Mr Woodman Portchester Civic Society.  
Cllr Price.  
Cllr Walker.  
Cllr Bell.  
Cllr Fazackarley.  
Cllr Cunningham.  
Ms Morton, Wicor Primary School.  
Mr Cable.  
Mr Britton.  
Mrs Kirk.

#### DOCUMENTS SUBMITTED AT THE INQUIRY

- Doc 1 - Phides Estates (Overseas) Limited and Secretary of State for Communities and Local Government and Shepway Council and David Plumstead [2015] EWHC 827 (Admin).
- Doc 2 - Supplementary Tables AB1, AB2 & AB3 to the evidence of Mr Blaxland.

- Doc 3 - Additional Suggested Condition – Field A.
- Doc 4 - Note in response to question from Mr Boyle.
- Doc 5 - Submissions by Cllr Walker.
- Doc 6 - Submissions by Cllr. Price.
- Doc 7 - Submissions by Cllr. Bell.
- Doc 8 - Submissions by Cllr Fazackarley.
- Doc 9 - Submissions by Cllr Cunningham.
- Doc 10 - Submissions by Portchester Civic Society.
- Doc 11 - Submissions by Mr Cable.
- Doc 12 - Submissions by Wicor Primary School.
- Doc 13 - Submissions by Mrs Kirk.
- Doc 14 - Summary of S106 Unilateral Undertaking.
- Doc 15 - Lpa CIL Compliance Schedule.
- Doc 16 - Email dated 27 April 2017, Response by Hampshire County Council regarding S106 Unilateral Undertaking Travel Plan Contributions.
- Doc 17 - S106 Unilateral Undertaking.
- Doc 18 - Minutes of Planning Committee 24 March 2016.
- Doc 19 - Appellant’s application for coasts.
- Doc 20 - Lpa response to the application for costs.

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED

- Doc 21 - Appellant’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).
- Doc 22 - Lpa’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).



## Appeal Decision

Hearing Held on 14 and 15 August 2018

Site visit made on 15 August 2018

**by Kenneth Stone BSc Hons DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 10<sup>th</sup> September 2018**

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**Appeal Ref: APP/A1720/W/17/3192431**

**Sawmills Industrial Park, Wickham Road, Fareham, Hampshire PO17 5BT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by BST Warehouses Ltd against Fareham Borough Council.
  - The application Ref P/17/0189/FP, is dated 17 February 2017.
  - The development proposed is described as 'demolition, site clearance and remediation with the erection of 72 C3 residential dwellings and associated access, parking, ancillary infrastructure and landscaping works'.
- 

### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing applications for costs were made by BST Warehouses Ltd against Fareham Borough Council and by Fareham Borough Council against BST Warehouses Ltd. These applications are the subject of separate decisions.

### Procedural matters

3. Prior to validation the planning application was the subject of a screening direction issued by the Secretary of State for the Department for Communities and Local Government. The screening direction concluded that the proposed development was not EIA development.
4. The Council's Planning Committee considered the application following the appeal being lodged and resolved that had it had the opportunity to determine the application it would have refused permission for six reasons. Those putative reasons included reference to inadequate information in relation to land contamination, inadequate survey information in respect of protected species and the absence of a planning obligation. During the appeal and prior to the conclusion of the hearing further information was submitted to address issues related to land contamination and protected species and a Unilateral Undertaking (UU) planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 was executed and submitted. On this basis the Council confirmed it did not seek to pursue the reasons for refusal related to those matters. I address the planning obligations and matters arising out of that further information below. The sixth reason for refusal, related to highway

- matters, was not pursued by the Council following further information and discussion with the Highway Authority.
5. The remaining substantive issues between the parties related to the design quality of the scheme and the adequacy of infrastructure provision and these form the basis of the main issues set out below.
  6. The Solent is internationally important for its wildlife and three Special Protection Areas (SPAs) have been designated to protect over wintering birds. The Solent Recreational Mitigation Strategy (SRMS) requires contributions from all dwellings built within 5.6 Km of the boundaries of the SPA. The appeal site is located within the 5.6 Km zone of influence of the Solent SPAs and it is not disputed that a contribution is required and indeed such a contribution is secured in the UU.
  7. However, following the Court of Justice of the European Union judgement in the *People over Wind and Peter Sweetman v Coillte Teoranta*, case C-323/17 it is not permissible to take account of measures intended to avoid or reduce harmful effects of the plan or project on a European site at the screening stage under the Habitat Regulations Assessment. The proposed development is not directly connected with or necessary for the management of the Solent SPAs. Given the agreement between the parties that a contribution under the SRMS is required it is accepted and acknowledged that there would be a potential for the proposal to have a significant effect on the interest features of the site through the increased pressure resultant from an increase in the population resulting in increased visitor numbers with the potential for increased disturbance of the over wintering birds. Whilst the SRMS has been developed to mitigate such impacts given the recent judgement of the CJEU this cannot be taken into account at the screening stage and therefore it must be concluded that it is likely the proposal would have a significant effect, either alone or in combination with other developments, through the increased recreational pressure.
  8. The outcome of that conclusion is that an appropriate assessment must be carried out to determine whether or not the development would have an adverse effect on the integrity of the European site. But again given the justification for the required mitigation this is on the basis that there would be a significant effect that requires to be mitigated. The appropriate assessment therefore results in a conclusion that there is a risk of adverse effects on the integrity of the site. However, the HRA process then seeks to consider whether the adverse effects can be mitigated. In this regard there is a published mitigation strategy which has been agreed by various bodies including Natural England, the Statutory Nature Conservation Body. The appellant has provided a UU planning obligation which, among other matters, secures the payment of the required contribution to meet the SRMS and would therefore adequately mitigate the adverse effects that would result from additional recreational pressure on the integrity of the SPAs. There is therefore no bar to development on this basis.
  9. The National Planning Policy Framework at paragraph 177 advises that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined. Given this proposal has

been the subject of appropriate assessment this has implications for the approach to decision making which I return to below in the planning balance.

## **Main Issues**

10. The main issues in this appeal are:

- Whether the proposed development would represent high quality design and contribute towards an attractive, inclusive, safe, well-connected and sustainable community as required by development plan and national policy; and
- Whether the proposed development makes adequate provision for a reasonable proportion of the necessary infrastructure required to support Welborne.

## **Reasons**

### *Background*

11. The statutory development plan for the area comprises the Local Plan Part 1: Core Strategy (CS), the Local Plan Part 2: Development Sites and Policies (DSP) and the Local Plan Part 3: The Welborne Plan (WP). In respect of this appeal the CS and the WP provide the relevant development plan policy framework against which to consider the development.
12. Policy CS13 of the CS provides for a Strategic Development Area north of Fareham to provide for housing and supporting environmental, social and physical infrastructure along with retail and employment floorspace. The aim is for the new community to be as self-contained as possible whilst complementing and supporting the established town centre of Fareham. The policy also sets out high level development principles for the new development.
13. The WP takes forward the strategic development area allocation and sets out the broad type, location, amount and character of the development of Welborne and is provided to guide decision making on future planning applications for the site. The Welborne Design Guidance (WDG) is a supplementary planning document to explain the Council's expectations in the design of Welborne. It builds on policies in the WP and aims to ensure Welborne will be a well-designed development that fits in with the landscape and provides a high quality place to live.
14. Both parties refer to the strategic allocation as a garden village and I understand that Welborne has been identified by the government as a Garden Village which will provide priority access to funding streams and support to assist in progressing the delivery of the 6, 000 homes on the site and the supporting infrastructure.
15. There is an outstanding application under consideration by the Council by Buckland Development Ltd for development of the strategic allocation.
16. The Statement of Common ground accepts that the proposed delivery of housing on the appeal site in advance of the outline planning permission being granted for the wider Welborne Area would, in this case be acceptable and would not prevent the delivery of the overall vision for Welborne and as such is acceptable in principle and as a standalone phase from the wider Welborne project. The proposal, for residential development for the site, is in accordance

with the Strategic Framework Diagram referenced in para 3.50 of the WP which identifies the site for residential development.

17. The appeal site is an existing industrial site occupied by various industrial buildings with the majority of the site laid to open hard standing. It is presently in a relatively low intensity use. There are changes in levels across the site with the eastern boundary of the site, adjacent the A32, being higher than the western boundary, formed by Forest Lane and the southern end of the site, adjacent to existing residential development, being lower than the fields and open countryside that rise to the north of the site.

### *Quality of Design*

18. The National Planning Policy Framework at paragraph 124 clearly advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve and that good design is a key aspect of sustainable development. At paragraph 127 the Framework further advises that decisions should ensure developments will function well, be visually attractive, sympathetic to local character, establish a strong sense of place and optimise the potential of the site to accommodate an appropriate amount and mix of development. Paragraph 130 is clear that account should be taken of local design standards or style guides or supplementary planning documents in reaching conclusions on the design of a scheme, with poor design being refused but design not used by decision makers to object to development if it accords with the expectations of policies.
19. The context within which this development is to come forward is as an early phase of the Welborne Garden Village. It may be seen not to prejudice the wider implementation and delivery of the Garden Village but it is still part of the wider allocation and obtains its in principle acceptance as part of the strategic allocation. The scheme must be considered in the context of the planning framework for Welborne, the strategic allocation, development management policies in the Welborne Plan and, as a material consideration to provide further advice and guidance on those policies, the Welborne Design Guide. The success of the project will for a significant part be dependent on the implementation of a high quality design. As the first proposals to be determined in that context it is imperative the aims and aspirations for the Garden Village are fully realised in all its constituent parts.
20. The overall design considerations of the scheme have a number of facets that interact and contribute to the character and layout of the scheme, including the arrangement of buildings, open space provision, the scale and bulk of buildings, parking areas and the communal garden area.
21. Policy WEL2 in the WP supersedes the high level development principles for Welborne as originally set out in CS13. These include a requirement for each phase to be well designed and incorporate a range of densities and building heights to create a series of attractive places with different and distinctive characters. The WP identifies four character areas including a Woodland Character Area at Figure 4.1. The WDG provides further advice on the expectations and division of the character in these character areas. The appeal site would be located within the 'Woodland Character Area'. In advising on the character of Welborne as a whole the WDG at 2.33 advises that the more sensitive areas of the development are those on the outskirts of the site. In these locations it is suggested development would be expected to be less

intensive and pre-dominantly 2-storey. Page 34 includes design guidance for the Woodland Character Area and indicates residential development should be predominantly 2 storey with occasional 2.5 storey pre dominantly detached and semi-detached with occasional short terraces and a mix of setbacks. The Woodland Character Area should be characterised by tree cover that is a dominant feature of the area, a layout that ensures surrounding woodland is visible from within the site and in particular locations be of a more rural character.

22. The appeal proposals are predominantly formed of short blocks of closely spaced terraces set in formal arrangements and with building heights that incorporate a significant proportion of building heights in excess of 2 storeys. The resultant layout, form and character is one of a more urban or suburban residential estate. The limited separation of spaces between a number of the terraces result in longer runs of building frontages dominating the spaces. The Crescent terrace to the south of the site and the group of housing enclosing the SUDs space to the north form distinctly urban typologies. Similarly the main housing group fronting the large open space with narrow plots and higher building heights, including up to three storeys, dominate the centre of the scheme and produce a very civic appearance.
23. There is an east west pedestrian route through the site which could link to the wider Welborne development and form part of the Green corridor and infrastructure required in the WP. The relationship of this with the large open area in the centre of the site contributes to a strong element of green infrastructure. However, its effectiveness is reduced to some extent by the subdivision from the SUDs area to the north and the children's play area and the constrained access points onto Wickham Road and Forest lane.
24. The large open space and the green route that runs through the site provide the potential for tree planting but given the limited other spaces and dominance of the road through the scheme this would not result in a Woodland Character where tree cover was a dominant feature. The nature of the road alignment and positioning of the blocks would restrict views to the wider areas beyond the site and reduce views to the woodlands beyond to glimpsed views rather than integrated within the overall design and contributing to the importance of woodland in those views.
25. In my view this conflicts with the Councils expectation for the area which would suggest lower intensity development in a more informal layout with a more rural character and could undermine WEL2 which seeks to ensure that development creates a series of attractive places with different and distinctive characters.
26. There are a number of locations where the layout provides flank walls and garden boundaries onto roads conflicting with the advice in the WDG and providing for poor or reduced surveillance of these sections of the site.
27. The northern section of the site is particularly unsuccessful in seeking to address the issues raised by the site. Whilst I acknowledge that the WDG seeks to promote perimeter block development it does not require only such a form of development and that would be inappropriate. This site is constrained is previously developed has significant variations in levels and other factors which may suggest that such an approach is not the only solution. However, many of the principles behind the perimeter block approach including natural

surveillance, defensible space, the separation and definition of public and private spaces are important concepts to retain. With the use of the parking courts many of these respected principles are lost. Much of the parking areas in these locations are poorly over looked are not readily distinguishable as private or public spaces or provide clear demarcation of ownership. They are poorly screened and are somewhat unrelieved unattractive large areas of hardstanding. Whilst it was suggested additional windows could be inserted in the flank walls of properties fronting these spaces to increase overlooking that does not address the basic issue. These windows would in any case at best be secondary windows or not to primary habitable rooms which would do little to improve passive surveillance of the parking areas.

28. These would conflict with WEL6 which requires development, amongst other matters, to provide a layout and design that will help to create safe well-connected neighbourhoods.
29. The small block of flats located at the entrance to the development appears shoehorned into this section of the site and has limited space for its setting or to provide amenity space for future occupiers of the building. The limited space to the building, the scale of the elevations and the proximity of tree planting would result in the southern space being unwelcoming and unattractive as a private amenity space for future occupiers.
30. The general appearance of the entrance to the site is somewhat compromised by the level of activity, limited space around the flat block, the additional private access for the four detached properties combining to produce an intensity of built form and level of activity that contributes to a more urban character for the scheme.
31. Bringing all these matters together I conclude that the proposed development would result in a development with a strong urban character conflicting with the more woodland character area proposed and the generally more informal and lower intensity of development rural character sought for this part of Welborne. This would result in a development which would compromise the expectations for the character and appearance of the area. The layout and design introduces elements that produce areas where surveillance would be poor and amenity provision for future residents was unacceptably constrained. On this basis the proposed development would not represent high quality design and would not contribute towards an attractive, inclusive, safe, well-connected and sustainable community as required by development plan and national policy.

#### *Necessary infrastructure*

32. Welborne as a new settlement which is aiming for the most part to be self-sufficient has been justified and evidenced on the basis of a delivery plan and assessment of the necessary infrastructure it will require to meet its needs. The WP is supported by an Infrastructure Delivery Plan and the extant application for the wider Welborne development is accompanied by an updated Infrastructure delivery plan.
33. The applicant has not submitted such a plan with their application albeit that such documentation is suggested to be appropriate in the WP. The Council have validated the application on the back of the applicant providing a note

- summarising how the development would contribute to the wider infrastructure costs for Welborne and a further note on these matters.
34. It was accepted at the hearing that the Council do not object to the specific costings the appellant has put forward as they have no evidence to challenge those.
  35. I also note that the appellant has drawn attention to the fact there is sufficient capacity in the local primary and secondary schools to meet the demands of the development and that there was sufficient capacity in the local doctors surgeries and dentists.
  36. However the principle of the development is predicated on the site forming part of the wider Welborne development and that as the new Garden Village develops there would be an expectation that the occupants of this development would use the services and facilities in the wider Welborne development and not travel to other areas. It is not unreasonable to expect all parts of the Welborne strategic allocation to make its proportionate contribution to the provision of the necessary infrastructure to support Welborne's future residents.
  37. The appeal site is a previously developed area of industrial land and will require significant decontamination. The decontamination costs form a significant portion of the costs in the appellants note to demonstrate that these are part of their contribution to the necessary infrastructure. However I have no evidence or clarity before me on whether the decontamination costs formed part of the wider Welborne IDP costs and whether the appellant's costs are of a similar scale. Similarly I have no indication as to whether by the appellant decontaminating this site that would reduce, or by how much, the cost that would be borne by the wider Welborne development. In these circumstances there is no clarity on whether there is cross subsidy such that would then justify reductions in other contributions.
  38. I note that the high costs of the development ascribed by the appellant but these appear in many instances to be the normal costs associated with a development of a previously developed site to a standard required by development plan policy. Whilst I acknowledge the higher per unit costs towards these matters as compared to the IDP costs divided across the wider Welborne development that does not address the issue. The evidence before me demonstrates that the appellant does not contribute towards infrastructure of schools, primary health care, extra care housing, community buildings, market square public realm sports facilities etc; indeed all of the social and services necessary to support a thriving community. What the costs provided show are costs associated with decontamination, the provision of green infrastructure, transport, and physical energy and drainage projects. But these are all necessary costs of the development.
  39. Overall, on the basis of the above, I conclude that the development does not make adequate provision for a reasonable proportion of the necessary infrastructure required to support Welborne. The proposal would therefore conflict with policy WEL41 which requires development to be undertaken in accordance with an agreed delivery plan unless there is suitable alternative appropriate infrastructure to adequately service the development.

## **Planning Obligations**

40. The appellant has secured planning obligations through a Unilateral Undertaking under sec 106 of the Town and Country Planning Act 1990. The UU contains six schedules which set out the obligations the owner undertakes to observe and perform.
41. Schedule one contains obligations related to highway works and a travel plan. These ensure that the highway works will be undertaken at the appropriate stage of development and follow the appropriate mechanisms. The travel plan will encourage sustainable travel. These matters are in accordance with policies WEL23 and WEL27 in the WP and are directly related to the development and fairly and reasonably related to the scale of the development.
42. Schedule 2 contains obligations which secure the provision of 22 affordable housing units, 15 as affordable rent and 7 as shared ownership. The obligations address issues including transfer, delivery, stair casing and release. Three wheelchair units are also secured. The provision of 30% of the units as affordable units is in accordance with policy WEL18 of the WP and is therefore fairly and reasonably related in scale and kind to the development.
43. Schedule 3 secures the provision and management of the open space and play area. These are consistent with the requirements of policies WEL29 and WEL35 of the WP and are fairly and reasonably related to the scale and kind of the development.
44. Schedule four secures the financial contribution required for the SRMS. The contributions are not used for the provision of infrastructure and so are not caught by the pooling restrictions under the Community Infrastructure Levy Regulations. The SRMS contributions support the management of the SPAs to mitigate the harmful impact of additional recreational activity on nesting birds/wading birds within the Solent region. The contributions are therefore fairly and reasonably related in scale and kind to the development.
45. Schedule 5 secures public access to the onsite routes to support the wider Welborne development and ensure access to the green corridors and general access through the wider allocation development as it comes forward. The provisions are therefore reasonably and fairly related to the scale and kind of the development.
46. Finally schedule 6 secures the provision and implementation of an Employment and Skills Plan in accordance with policy WEL43 to provide opportunities for local people to be involved in employment and training during construction. This directly relates to the implementation of the development and in part is directed towards the social dimension of sustainable development. The obligation is fairly and reasonable related to the scale and kind of the development.

## **Benefits of the Scheme**

47. The proposed development would provide for some 72 new dwellings in an Authority where the Council accept that it can only provide for between 3.5 years and 4 years of housing land supply. The houses would come forward now and be an early housing opportunity and first delivery from the Welborne allocation which will contribute to the Council's housing delivery target. This is a significant benefit but given the limited number of units I reduce the overall

weight of this factor and afford it moderate weight. Of those new houses the development would make provision for 15 affordable units, secured through the UU. The Council has a significant need for affordable housing but given the limited number of units provided, which is also no more than policy requires, I also attach moderate weight to this benefit.

48. The appellant suggests the remediation of the site is a key benefit of the scheme. Whilst the old industrial, somewhat dilapidated buildings, hard surfacing and previously developed land would be removed and the site brought into a more productive use this would be the case in any redevelopment of the site. On this basis I give this only limited positive weight as a benefit of the scheme.
49. The scheme would result in the moving of the main access on the A32 and removal of any vehicular access through the site between the A32 and Forest Lane. These are matters that would improve highway safety and are minor benefits of the scheme. Again they could be secured with any redevelopment of the site. I afford this limited positive weight.
50. The site would make provision for connection to the foul drainage network which could facilitate surrounding properties also connecting to the foul drainage system reducing the reliance on soakaways. This is a minor benefit of the scheme to which I attributed limited positive weight.
51. The appellant suggests that positive benefit derives from the landscaping and green infrastructure provided on the site. However, this is a necessary requirement to meet policy and ensure the development provides a good standard of amenity for future residents', to protect adjoining occupiers and addresses ecological requirements. It is also necessary to address the woodland character area within which it is proposed. It is not therefore a positive benefit of the scheme.
52. Adjoining the site is Mill House, a grade II listed building. The proposed development would remove existing large industrial structures close to the boundary and improve the setting of the listed building. This is a positive benefit to which I attribute moderate positive weight.
53. Any mitigation measures provided or secured in respect of the scheme are not positive benefits but seek to address and mitigate the impact of the development.
54. There would be economic benefits associated with the development including new homes bonus, CiL payments for which the development would be liable, the additional spend in the local economy during implementation of the development and the additional financial and community support derived from the increased population using services and facilities in the area once the development is occupied. I give this moderate positive weight.

### **Other matters**

55. The Council following the publication of the new Framework have confirmed that their supply of available housing land would be in the range of 3.5 to 4 years supply. The appellant accept that this is a reasonable range for the authority at this point in time. The Council cannot therefore demonstrate a 5 year supply of housing land.

56. The development would remove the existing buildings and hard surfacing from the land and de-contaminate the site. The Council originally provided a putative reason for refusal in respect of land contamination however upon receipt of further information have not continued with any objections to the scheme on that basis. The Council is satisfied that should permission be forthcoming land contamination could satisfactorily be addressed by condition and I have no evidence before me to disagree with those conclusions.
57. Similarly further information including further survey work and a mitigation strategy to address any concerns that may arise in respect of Dormice has been provided. Agreement has been reached between the parties that the most appropriate way forward is to accept that there is a strong likelihood that Dormice are on the site. On this basis the appellant has produce a Dormice mitigation strategy in the event it is demonstrated that they are. The Council, and County Council ecologist, accept that the mitigation strategy would address the effects of the development on Dormice if they were to be identified. On this basis a condition requiring the implementation of the Dormice mitigation strategy in the event Dormice were established to be on the site would be an appropriate way forward.

### **Planning Balance**

58. Given that the development has been subject to appropriate assessment the presumption in favour of sustainable development at paragraph 11 of the Framework does not apply. The proposal is therefore only to be considered on the basis of the section 38(6) balance such that the appeal should be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case I have concluded that the proposal would not be high quality design and would conflict with development plan policies CS13 WEL2 and WEL6. I have also concluded that the proposal would not provide adequate infrastructure contributions and would therefore conflict with WEL42.
59. The Council cannot demonstrate a 5 year housing land supply and therefore the provision of housing including affordable housing is a significant consideration. However I have given this only moderate positive benefit given the scale of the development. I have noted a number of other benefits associated with the scheme and take account of the weight I have ascribed to them above.
60. The Framework advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Given the conflict with the development plan and the advice on design in the Framework the other considerations do not indicate that a decision otherwise is appropriate. Albeit there is a shortfall in the housing land supply this is the first development in a Garden Village where design will be fundamental to its success and the shortfall of housing does not mean housing at any cost.

### **Overall conclusion**

61. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Simon Ricketts	Town Legal LLP
Gavin Hall	Savills
Richard Powell	Latchmoor Properties
Bruce Slattery	Jacobs Engineering
Jonathan Moore	MH Architects
Andrew Linfoot	Jacobs Engineering

### FOR THE LOCAL PLANNING AUTHORITY:

Luke Simpson	Adams Hendry
Alex Russell	Southampton & Fareham Legal Services Partnership
Justin Leach	LDA Design
Valerie Conway	VE Consulting
Maral Miri	Hampshire County Council

### INTERESTED PERSONS:

Mrs Brenda Clapperton	Secretary of Fareham Society
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### DOCUMENTS SUBMITTED DURING HEARING

- 1 Draft Unilateral Undertaking and summary Schedule submitted by appellant
  - 2 Comments on Revised National Planning Policy Framework submitted by Council
  - 3 Comments on revised national Planning Policy Framework, summary of outstanding issues and Dormouse mitigation strategy submitted by appellant
  - 4 Copy of e-mail from Council to Pins Case officer dated 10 August including NPPF statement, pre-application proposal, delivery trajectory for Welborne The Executive Leaders Announcement on HLS and extracts of Draft Planning Practice Guidance
  - 5 Copy of Judgement of European Court C323/17 People Over Wind and Peter Sweetman v Coillte Teoranta submitted by Council
  6. Copy of updated planning condition 2 to update plan reference numbers and copies of relevant plans (latest revisions)
  - 7 Copy of extract from Welborne Infrastructure Delivery Plan related to New Homes Bonus submitted by appellant
  - 8 Copy of various amended conditions submitted by appellant
  - 9 Original of signed, sealed and dated Unilateral Undertaking
  - 10 Appellants application for Costs
  - 11 Council's application for Costs.
- END



## Appeal Decision

Inquiry Held on 6 - 9 November 2018

Site visit made on 9 November 2018

**by Kenneth Stone BSc Hons DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12<sup>th</sup> April 2019**

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**Appeal Ref: APP/A1720/W/18/3199119**

**Land east of Posbrook Lane, Titchfield, Fareham, Hampshire PO14 4EZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Foreman Homes Ltd against the decision of Fareham Borough Council.
  - The application Ref P/17/0681/OA, dated 9 June 2017, was refused by notice dated 14 December 2017.
  - The development proposed is described as an 'Outline Planning Application for Scout Hut, up to 150 Dwellings, Community Garden, associated landscaping, amenity areas and means of access from Posbrook Lane in addition to the provision of 58,000 square metres of community green space'.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application was submitted in outline with all matters reserved for future consideration with the exception of access. The access details are shown on the plan 'Proposed Site Access 16-314/003E' which along with the 'Site Location Plan 16.092.01E' are the plans that describe the proposals. An illustrative plan was submitted and the latest iteration was 16.092.02F. However, this was for illustrative purposes only to demonstrate one way in which the site could be developed but does not form part of the formal details of the application.
3. Prior to the commencement of the Inquiry the Council and the appellant entered into a Statement of Common Ground. The original application had been submitted with the description of development in the banner heading above. The parties agreed that there was no requirement for the Scout Hut and removed this from the illustrative master plan and amended the description of development to reflect the amended proposed development.
4. I am satisfied that the proposed alteration to the scheme, which does not amend the red line boundary and makes only a minor adjustment to the overall scheme, is not material. I am satisfied that there would be no material prejudice to parties who would have wished to comment on the proposals and that the amended illustrative plan was available as part of the appeal documents and therefore available for parties to view and comment on. I have therefore considered the appeal on the basis of the amended description which

read as follows: 'Outline application for up to 150 dwellings, community garden, associated landscaping, amenity areas and a means of access from Posbrook Lane.'

5. In the Statement of Common Ground the Council and the Appellant agree that an Appropriate Assessment would be required in the light of The People Over Wind Judgement<sup>1</sup>. During the Inquiry a shadow Habitats Regulations Assessment document was submitted (APP4) to enable an Appropriate Assessment to be made. In this regard I consulted with Natural England to ensure that I had the relevant information before me if such an assessment were to be required. The main parties were given the opportunity to comment on Natural England's consultation response.
6. By way of an e-mailed letter dated 5 November 2018 the Secretary of State notified the appellant, pursuant to regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, that further information was required. The further information was publicised on 4 January 2019, a period of 31 days was given for the receipt of comments and the parties were given a period following the end of the publicity period to collate and comment on the matters raised.
7. I have had regard to all the Environmental Information submitted with the appeal including the original Environmental Statement, the Additional Information, the Shadow Habitats Regulations Assessment, the further responses and the parties' comments in reaching my conclusions on this appeal.
8. The Council has drawn my attention to a recent appeal decision, at Old Street, APP/A1720/W/18/3200409, which had been published since the Inquiry was conducted and in which similar issues were considered in respect of the Meon Valley. The parties were given the opportunity to comment on this decision.
9. The Government published a revised National Planning Policy Framework (the Framework), and updated guidance on how to assess housing needs as well as results of the Housing Delivery Test along with a technical note on 19 February 2019. The parties were given the opportunity to comment on how these may affect their respective cases. I have had regard to this information and the comments of the parties in reaching my decision.
10. I closed the Inquiry in writing on 19 March 2019.

### **Main Issues**

11. In the Statement of Common Ground the appellant and Council agree that with the completion of a satisfactory legal agreement reasons for refusal e through to l would be addressed. No objections to the Unilateral Undertaking were raised by the Council and these matters were not contested at the Inquiry. It was also agreed in the Statement of Common Ground that reason for refusal d could be overcome by the imposition of an appropriately worded condition, and I see no reason why this would not be appropriate.
12. On the basis of the above the remaining outstanding matters and the main issues in this appeal are:

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<sup>1</sup> The Court of Justice of the European Union judgement in the People over Wind and Peter Sweetman v Coillte Teoranta, case C-323/17

- The effect of the proposed development on the character and appearance of the area, including having regard to whether or not the site is a valued landscape and the effect on the strategic gap;
- The effect of the proposed development on the setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II\* listed buildings; and
- The effect of the proposed development on Best and Most Versatile Agricultural Land (BMVAL).

## Reasons

13. The development plan for the area includes The Local Plan Part 1: Core Strategy (2011 -2026) (LPP1), The Local Plan Part 2: Development Sites & Policies (2015) (LPP2) and The Local Plan Part 3: Welbourne Plan (2015) (LPP3).
14. LPP3 specifically addresses a new settlement at Welbourne and does not include policies that bear directly on the effects of the development the subject of this appeal. Its relevance is however material in the context of the wider housing land supply issues in the area.
15. In terms of LPP1 policy CS14 seeks to control development outside defined settlement boundaries seeking to resist proposals which would adversely affect its landscape character and function. While policy CS22 advises land within strategic gaps will be treated as countryside and development proposals will not be permitted where it affects the integrity of the gap and the physical and visual separation of settlements.
16. In LPP2 Policy DSP6 further advises in respect of residential development outside of defined urban settlement boundaries that it should avoid a detrimental impact on the character or landscape of the surrounding area. DSP5 addresses the protection and enhancement of the historic environment. In considering the impacts of proposals that affect designated heritage assets it advises the Council will give great weight to their conservation and that any harm or loss will require clear and convincing justification, reflecting the statutory and national policy positions.
17. Policy DSP40 in LPP2 includes a contingency position where the Council does not have a 5 year supply of housing land. It is common ground between the parties that the Council does not have a 5 year supply of land for housing albeit the extent, length of time this may persist and consequences are disputed. I address these latter matters further below however insofar as the parties agree that the Council cannot demonstrate a five year supply of housing land the contingency position in policy DSP40 is engaged and this advises that additional sites outside the urban area boundary may be permitted where certain criteria are met.
18. An emerging draft Local Plan, which in due course is anticipated to replace LPP1 and LPP2, was launched for consultation in autumn of 2017 but has now been withdrawn. At the time of the Inquiry I was informed that a further review is to take place following revisions to the National Planning Policy Framework and the Government's latest consultation in respect of housing figures. The Council propose to consult on issues and options relevant to the progression of the Council's new development strategy following the outcome

of the Government's recent consultation. Consultation on a new draft Local Plan is not now anticipated until the end of 2019.

19. The Titchfield Neighbourhood Plan 2011 – 2036 (TNP) is also emerging; it was published for consultation in July 2018 with a further draft submitted to the Council for a compliance check, in October 2018, prior to consultation as the submission draft. At the Inquiry it was confirmed that further documents were submitted to the Council and that the TNP complied with the Statutory requirements. The Council undertook Consultation on the submission draft between November 2018 and January 2019 but at this point in time the plan has not yet been submitted for independent examination. The TNP includes a plan identifying the strategic gap, the Meon gap, and the Defined Urban Settlement Boundary (DUSB) as well as housing policies which review the DUSB (DUSB 1) and address windfall sites (H1), affordable housing (H2), Local Need (H3) and Development Design (H4).

*Character and Appearance, including Valued Landscape and Strategic Gap*

20. The appeal site is an area of some 6.6 ha of open grazing field on the east side of Posbrook Lane. The land gently slopes from its north-west corner towards its eastern edge. The site is segregated from Posbrook Lane by a hedgerow but for the most part the site is open with little demarking fences, trees or hedge rows. There is some evidence of a previous subdivision of the site on a modern fence line however only limited post foundations remain and generally the whole site has a reasonably consistent grazed grassland appearance.
21. To the north, the appeal site abuts the settlement edge of Titchfield at an estate called Bellfield. The urban edge is open and harsh with little by way of softening landscaping. Towards the south-western corner the site abuts a cluster of buildings that includes the farmstead of Posbrook farm and which includes two Grade II\* listed buildings (the Farmhouse and the southern barn). The boundary between these is screened for the most part by a substantial tree and hedgerow belt. Beyond these and towards the south are open agricultural fields. To the east the site slopes down to the Titchfield Canal, valley floor and River Meon beyond.
22. The Meon Valley is a major landscape feature that runs through the Borough and slices through the coastal plain. The parties agree that the site is located within the Lower Meon Valley Character Area but disagree as to the finer grain character type as detailed in the 1996 and 2017 Fareham Landscape Assessments. The appellant points to the 2017 Assessment identifying the western part of the appeal site as being identified as open coastal plain: Fringe Character with a small portion of the site being open valley side. The Council contend that the whole site is more appropriately identified as open valley side.
23. The difference in opinion and identification relates to the influence of the urban settlement boundary, the topography of the site and other landscape features in the surroundings. The fact that the 2017 classification is based on somewhat historic data does call into question the accuracy at the finer grain. There is some evidence in terms of photographs and on site that the site was subdivided and that there may have been different practices implemented which resulted in parts of the site having a different appearance and therefore leading to a different classification at that stage. On site I was firmly of the view that the site was of an open character with little in the way of field boundaries, hedges or other landscape features to different areas of the site.

Whilst there was a break in the slope this was minimal and did not change the characterisation from a gentle slope. There were minor variations across the site and I was not persuaded that this was such a feature that would change the character type of the site. Finally, in the context of the urban settlement edge influence it is undeniable that it is there. There is a lack of screening and there is a harsh and readily visible urban edge. This however is a distinct break with the open rural field which then flows to the open agricultural fields beyond the farmstead cluster and the lower valley floor below. In my view in the wider context the urban influence is given too much weight in the appellant's assessment and in association with the sub division of the site into smaller fields adds to the reduced weight given to the effect of the proposed development.

24. The proposed development would result in the provision of a suburban housing estate of up to 150 units on an open field that would substantively change the character of the field. The field appears, when looking south and east, as part of the broader landscape compartment and part of the Lower Meon Valley landscape. Views back towards the site would result in the perception of the intrusion of housing further into the valley and valley sides to the detriment of the character of the valley. The characteristics of the site are consistent with those of the Meon Valley and representative of the open valley side which includes sloping landform, a lack of woodland with views across the valley floor and is generally pastoral with some intrusive influences of roads or built development.
25. The visual effects of the development would be evident from a number of public footpaths both through and surrounding the appeal site as well as along Posbrook Lane, to the south and from the valley floor and opposite valley side. The further encroachment of built development into the countryside would detract from the rural appearance of the area.
26. The potential for landscaping to screen and reduce the visual effects and to a certain extent provide some positive contribution was advanced by the appellant. Whilst additional landscaping along the proposed urban edge would produce an edge that was more screened and in effect a softer edge than present is undeniable and would of itself improve the appearance of the existing urban edge. However, this needs to be weighed against the loss of the open field separation of elements of built development and the creeping urbanisation of the area. Whilst planting would assist in reducing the direct line of sight of houses in the longer term there would still be effects from noise, activity, illumination in the evening along with the localised views that would inevitably and substantively change.
27. I would characterise the landscape and visual effects as substantial and harmful in the short to medium term, albeit this would reduce in the longer term, I would still view the adverse effect as significant.
28. There is some dispute as to whether the site is a valued landscape. The Lower Meon Valley is a significant landscape feature and both parties assessed the site against the box 5.1 criteria in Guidelines for Landscape and Visual Impact Assessment. In this context it is a reasonable conclusion that both parties accept that the Lower Meon Valley has attributes that are above the ordinary. There is some debate as to whether the appeal site contributes to these or is part of that as a valued landscape. On the basis of the evidence before me I

have no difficulty in accepting that the Lower Meon Valley is a valued landscape in the context of the Framework and this is a conclusion consistent with my colleague in the Old Road decision. From my visit to the site and the evidence presented to me I am of the view that the appeal site shares a number of those attributes including the nature of the rural landscape and topography, its scenic quality and that it is representative of the valley sides character type. The site does form part of the broad visual envelope of the Lower Meon valley and part of the landscape compartment and therefore should be considered as part of the valued landscape.

29. Turning to the issue of the strategic gap. The appeal site is located in the Meon Valley strategic gap. The purpose of the strategic gap as identified in policy CS22 is to prevent development that significantly affects the integrity of the gap and the physical and visual separation of settlements. Whilst the Council sought to broaden this out to include the setting of settlements that is not how the development plan policy or indeed its policy justification is written. This states the gaps help to define and maintain the separate identity of individual settlements and are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green corridors. To go beyond these factors in assessing the development against policy would be introducing tests that are not within the development plan.
30. The proposed scheme would extend the urban edge of Titchfield further into the gap than it presently is. There would however be no perception of coalescence or indeed any visual reduction of the separate settlements (I do not see the cluster of buildings as a separate settlement in this context). There would be no demonstrable reduction in the physical separation and the gap's integrity would not be significantly affected. Whilst there would be a minor outward extension in the context of the settlement pattern and separation of settlements the proposed development would be minor and would not result in a significant effect.
31. Overall for the reasons given above I conclude that the proposed development would result in material harm to the character and appearance of the area. This would result in harm to a valued landscape. There would however be no significant effect on the strategic Meon Gap. Consequently, the proposed development would conflict with policies CS14 and DSP6 which seek to protect the character and appearance of the area of land outside the defined urban settlement boundary but would not conflict with policy CS22.

*Setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II\* listed buildings*

32. South of Titchfield on the east side of Posbrook Lane there is an historic farmstead that includes the listed buildings of Great Posbrook and the southern barn at great Posbrook farm. Both of these are Grade II\* which puts them in the top 8% or so of listed buildings in the Country. They are a significant and invaluable resource.
33. The list description for Great Posbrook identifies it as a C16 house altered in the C19 with evidence of elements of C17 and C18 interior details. There is some question mark over the precise dating of the origins of the building with the Council pointing to evidence that it dates from early C17. While the alterations have created two parallel ranges the earlier T shaped form is unusual and is of particular architectural importance because of its rarity. The

main parties' experts agree that the building is of considerable historic interest due to its fabric, architectural composition and features.

34. The list description for the southern barn identifies it as a late medieval aisled barn. However, the Council point to more recent dendrochronology which indicates that it is likely to be late C16 or early C17 with the eastern end being C18. It is a substantial historic barn with considerable vernacular architectural interest being a good and relatively rare example of a high status English barn. Its size and scale demonstrating its association with a high status farm.
35. The listings make reference to other buildings in the cluster forming the farmstead including a store shed, small barn, cartshed and pigsties but note that these are of local interest only. The main listed buildings together with the buildings of local interest form an early farmstead with a manorial farmhouse, significant barn and numerous other buildings. There have been recent interventions as part of enabling development which resulted in the demolition of modern farm buildings the conversion of some of the historic buildings and the construction of new buildings to provide for additional residential occupation on the site. Much of the new building footprint was related to original buildings in an attempt to reinstate the historic arrangement of farm buildings in a courtyard pattern.
36. The significance of the listed buildings and the farmstead derives from the age, architectural quality, size, scale and relationship of buildings. There is a functional relationship with the adjoining land which was likely farmed as part of the farm holding and reasonable evidence to suggest that there may be an associative link with Titchfield Abbey which adds and contributes to this significance. There has been some more recent and modern infill development and recent housing within the farmstead adjacent and in the wider setting which has a negative impact and detracts from the significance. The wider setting of the site within a rural landscape assists in understanding the scale and status of the land holding, sets the farmstead in an appropriate open rural agricultural setting and separates it from the close by settlement of Titchfield. This contributes to the overall significance of these assets.
37. The proximity of the settlement of Titchfield and the exposed urban edge already have a negative impact on the wider setting of the heritage assets bringing suburban development close to the farmstead and reducing the wider rural hinterland.
38. The appeal site is formed by open land that wraps around the northern and eastern edge of the cluster of buildings within which the farmstead is set. It lies between the southern edge of Titchfield and the northern edge of the cluster of buildings and abuts the northern and eastern boundary of the farmhouse.
39. It is common ground that the proposals would not result in physical alterations to the listed buildings. There would be no loss of historic fabric or alterations to the architectural quality or form of the actual buildings. Similarly there would be no direct alteration of the farmstead.
40. Both parties also agree that the proposal would be located within the setting of the listed buildings and the farmstead. There is also agreement that the proposal would result in harm to the setting of the listed buildings by virtue of built development being closer to the buildings and reducing the rural setting of the buildings. Whilst both parties accept that the harm would be less than

substantial in terms of the Framework, the dispute arises in respect of the level of that harm. The appellant broadly contends that there are limited aspects where the effect would be perceived or experienced and with appropriate landscaping the effect would be reduced over time such that it would fall at the bottom end of the spectrum of less than substantial harm, albeit acknowledging that some harm would be occasioned. The Council on the other hand would put the harm more to the middle of the range that would be less than substantial and contend there are a number of areas where the perception would be significant, that the landscaping may reduce the effect over time, but not remove it, that the noise, activity and illumination associated with a suburban housing estate would further add to that impact and that the effect of changing that land from open rural land to suburban housing would fundamentally alter the setting and obliterate some of the functional and associative links with the adjoining land, albeit different degrees of weight were ascribed to the various elements of harm.

41. There is no dispute that the site would result in the introduction of housing on the area of land adjacent and bordering the farmstead and main farmhouse. This would bring the settlement of Titchfield up to the cluster of buildings and in effect subsume that once separate element into the broader extent of the settlement. This would reduce the connection of the existing farmstead and listed buildings to the rural hinterland and obscure the separation from the nearby settlement. The character of that change would be noticeable and harmful. It would be perceived when travelling along Posbrook Lane when leaving or entering the village and would be readily appreciated from Bellfield and the adjacent existing settlement edge. There are also public footpaths running through the land. These would be both static and kinetic views when moving along and between the various views. This would be a significant and fundamental change.
42. When viewed from the south, along Posbrook Lane and the public footpaths, travelling towards the farmstead and Titchfield the size and scale of the barn are fully appreciated, there are views available of the manorial farmhouse within these views and together the site is recognisable as a distinct farmstead. Whilst the urban edge of Titchfield is also visible it is appreciated that there is a degree of separation. The proposed development would intrude into these views and in the short to medium term would be readily distinguishable as suburban housing. In the longer-term landscaping may reduce this negative effect by the introduction of a woodland feature at its edge, which the appellant argues is reflective of the historic landscape pattern in the area. However, this would introduce a sense of enclosure around the farmstead and listed buildings that would detach them from the rural hinterland and reduce that historic functional connection with the adjoining open land. Whilst there is evidence of small wooded areas in the historic mapping these were freestanding isolated features and not so closely related to areas of built development. The point of the historic pattern in the area is the farmstead with open land around that was once farmed by the manorial farm and which would not have included such features in such proximity to the main farmstead.
43. There would also be views of the relationship between the farmhouse and the proposed development in views on the public paths to the east. Again, these would be significant and harmful in the short to medium term. There may be some reduction in that harm as landscaping matures but even with dense planting and the softening of the existing urban edge it will be an undeniable

fact that suburban development has been undertaken and that there is no separation between the settlement of Titchfield and the historic farmstead including the listed buildings.

44. For the reasons given above I conclude that there would be harm to the setting of the listed buildings and historic farmstead. I would characterise that harm as less than substantial as this would not obliterate the significance of these historic assets. The proposal would however have an adverse and harmful effect on the setting of these assets which would affect their significance given the contribution that the setting makes to that significance. The urbanisation of the remaining area that separates the farmstead and listed buildings from the settlement is significant and whilst the rural hinterland remains to the south and west the dislocation from the existing built up area is an important and fundamental component of that setting that would be lost as a result of the development. The effect is therefore significant and would not in my view be at the lower end of the less than substantial scale as contended by the appellant but more in line with that suggested by the Council. The proposal would therefore conflict with development plan policy DSP5 which seeks the protection and enhancement of heritage assets and is consistent with national policy.
45. These are two Grade II\* listed buildings and the Framework advises that great weight should be given to a designated heritage asset's conservation, any harm should require clear and convincing justification and assets should be conserved in a manner appropriate to their significance. I also have regard to my statutory duty in respect of listed buildings and their setting. The courts have also held that any harm to a listed building or its setting is to be given considerable importance and weight. These matters are reflected in my planning balance below, which includes the Framework's 196 balance.

*Best and Most Versatile Agricultural Land*

46. The appellant undertook a survey of agricultural land and this assessment is provided in appendix SB3 of Mr Brown's proof. This identifies the limited amount of Grade 3a land (4.1 Ha) that would be affected by the development and sets this in the context of Fareham. In my view this does not trigger the sequential test in the Framework footnote 53 as significant development.
47. It is accepted that whilst there is a loss of BMVAL and that this is a negative to be weighed against the scheme it would not of itself amount to such that would justify the dismissal of the appeal. This is a point that was not refuted by the Council who accepted that it may not justify dismissal but should be weighed as a negative factor in the overall balance against the development.
48. I have no substantive evidence to depart from those views and the approach adopted is consistent with that of a colleague in an appeal at Cranleigh Road (APP/A1720/W/16/3156344).
49. The appellant's report concluded that given the grade of land, the small scale and the overall comparative effect on such land in Fareham, whilst it is a negative, it should be afforded no more than limited weight. I concur with that assessment for the views given and therefore ascribe this loss limited weight in my overall planning balance.

## **Other Matters**

50. The Council and appellant agree that the Council cannot demonstrate a 5 year housing land supply. Time was spent at the Inquiry considering the extent of the shortfall based on, amongst other matters, the correct buffer and the correct household projection base date to use. The publication of the Housing Delivery Test results confirmed that Fareham is a 5% buffer Authority. The government also confirmed that it is the 2014 based household projections that should be used as the basis for calculation of the five-year requirement under the standard method. On this basis both parties agree that the minimum five-year requirement would be 2,856 in the period 2018 to 2023.
51. The updated position of the parties is thus a 3.08 years supply taking the appellants position or a 4.36 years supply if the Council's position were to be adopted. I have been provided with further supply evidence in relation to the Old Street Inquiry which calls into question some of the supply side dwellings included in the Council's figures which were permitted since April 2018. Excluding these the appellant suggests the Council's figures would drop to 4.08 years supply.
52. Whichever figures are adopted it is clear that the Council cannot identify a five-year supply of available housing land and that the shortfall is significant. The provision of additional housing in an area where there is a significant housing shortfall in my view translates into a significant positive benefit for the scheme in terms of the overall planning balance.
53. The appeal site is located where there is potential for a significant effect on a number of European designated wildlife sites which comprise Special Areas of Conservation (SACs), Special Protection Areas (SPAs) potential Special Protection Areas (pSPAs) and Ramsar sites. The proposal has been subject to Habitats Regulation Assessment and a shadow Appropriate Assessment process by the appellant. Given the requirement for further publication of environmental information in association with the Environmental Statement consultation was undertaken with Natural England as the Nature Conservation Body to ensure there was no further procedural or administrative delay at the end of the process. However, given the conclusion of my assessment of the effect of the development on the wider landscape and the designated heritage assets I am not minded to allow the appeal. On this basis an Appropriate Assessment does not need to be carried out, as it is only in circumstances where I am minded to grant consent that such an assessment is required to be undertaken. Moreover, in the interim the Framework, paragraph 177 has been amended to advise that it is not the requirement to conduct Appropriate Assessment but the conclusion that following that assessment there is an identified likely significant effect on a habitats site where the presumption in favour of sustainable development does not apply. In these circumstances this matter does not therefore affect the approach to my planning balance.

## **Benefits of the Scheme**

54. As noted above the provision of housing in an Authority area where the Council cannot identify a five-year housing supply is a significant benefit of the scheme. The Statement of Common Ground signed by the parties makes it clear that there is a significant need for affordable housing. The provision of 40% of the total number of units provided as affordable housing, secured

through the planning obligation, is therefore also a significant positive benefit of the scheme.

55. The appellant contends that there would be between 360 and 465 direct, indirect and induced jobs created by construction. It is further contended that there would be an on-going £4.1m gross expenditure per annum from future residents. It is further contended that the landscaping and ecological mitigation would improve the appearance of the harsh urban edge currently created by Bellfield. These are benefits that accrue from this development and are therefore reasonable to add as positive contributions in the planning balance. They are of a scale which reflects the scale of the development.
56. For these reasons the social benefits from additional housing and affordable housing are of significant positive weight, the economic benefits are of moderate positive weight, and the environmental benefits are of limited positive weight.

### **Planning Obligation**

57. A completed Unilateral Undertaking (UU) dated 8 November was submitted to the Inquiry before the conclusion of it sitting. The UU secures matters related to transport including the site access, travel plan and construction traffic management as well as a contribution towards sustainable transport. The UU also secures public open space provisions, including contributions; environmental and habitat obligations, including commuted maintenance and disturbance contributions and the transfer of a bird conservation area; an education contribution and obligations to protect or provide on site routes for the public. These are in effect mitigation measures or matters directly related to the development and do not amount to positive benefits.
58. The appeal is to be dismissed on other substantive issues and whilst an obligation has been submitted, it is not necessary for me to look at it in detail, given that the proposal is unacceptable for other reasons, except insofar as it addresses affordable housing.
59. In respect of affordable housing the UU secures 40% of the housing as affordable units with the mix, tenure and location controlled by the undertaking. I have already identified this as a benefit of the scheme which will be taken into account in the planning balance.

### **Planning balance**

60. I have concluded that the proposed development would result in material harm to the significance of two Grade II\* listed buildings through development in the setting of those buildings. This harm is in my view less than substantial harm in the terms of the Framework a position also adopted by both main parties. Paragraph 196 of the Framework advises in such circumstances that this should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.
61. I have identified the public benefits of the scheme above and these include the provision of additional housing in an authority where there is not a five year supply of housing land and the provision of affordable housing in an area where there is a significant need. I give these matters significant weight. Added to these would be the additional jobs and expenditure in the locality arising from construction activity and following completion of the development. Given the

scale of development these would not amount to small figures and I have ascribed this moderate weight. The proposed landscaping and biodiversity enhancements are a balance and required in the context of also providing a degree of mitigation I therefore only ascribe these limited positive weight.

62. The Framework makes it clear that when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Furthermore it advises that any harm to the significance of a designated heritage asset should require clear and convincing justification. There is a statutory duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. The courts have interpreted this to mean that considerable importance and weight must be given to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise in planning decisions.
63. Heritage assets are an irreplaceable resource and they should be conserved in a manner appropriate to their significance. The Farm House and Barn at Great Posbrook are both Grade II\* and therefore are assets of the highest significance. The development of a substantial housing estate in the rural setting of these listed buildings, and farmstead of which they form part, would materially alter the relationship of the listed buildings and farmstead to the nearby village and wider rural hinterland. This would merge the existing distinct and separated grouping of buildings with the expanding village removing that degree of separation and obscuring the historic relationship with the village and wider countryside. I would not characterise this less than substantial harm as of such limited effect as 'at the lower end' within that spectrum as suggested by the appellant. Indeed, the setting contributes to the significance of these listed buildings and their appreciation from both distinct view points and kinetic views. The negative effect would have a measurable and noticeable effect on the existing physical relationships of development in the area and thereby the understanding of the historic development of those over time. The understanding of the high status nature of the house and barn, and their significance, is derived in part from an appreciation of the separation from the village, their setting within the wider agricultural and rural hinterland as well as their size, scale, architectural quality and relationship of the buildings to each other and the surrounding development.
64. On the basis of the above I conclude that the less than substantial harm I have identified, and to which I give considerable importance and weight, is not outweighed by the significant public benefits of the scheme. On this basis I conclude that the scheme should be resisted. As the scheme fails the paragraph 196 test this would disengage the paragraph 11 d tilted balance that would otherwise have been in play given the lack of a five-year supply of housing land.
65. The scheme would be subject to the requirement to carry out an Appropriate Assessment under the Habitats Regulations if I were minded to allow the appeal. At the time of submission of the appeal Paragraph 177 of the Framework required that the presumption in favour of sustainable development, in paragraph 11, would not apply where an Appropriate Assessment was required to be carried out. The latest iteration of the Framework has amended paragraph 177 to only disengage the presumption in favour of sustainable development where the development is likely to have a

significant effect on a habitats site. If an Appropriate Assessment has concluded the development would not adversely affect the integrity of the habitats site the presumption would not be disengaged. However, given my conclusions in respect of the impact on heritage assets and the other harms I have identified I am not minded to allow the appeal and therefore I do not need to carry out an Appropriate Assessment.

66. Whilst the presumption in favour of sustainable development is not disengaged by virtue of paragraph 177 of the Framework, paragraph 11 d, the so called 'tilted balance', is disengaged by virtue of my conclusions in relation to the effect on the heritage assets and the application of 11 d i. The proposal therefore is to be considered in the context of a straight balance. Section 38(6) requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposal would result in material harm to the character and appearance of the area, which is a valued landscape, to the setting of two Grade II\* listed buildings and a minor adverse effect on best and most versatile agricultural land in the area. On this basis the proposal would conflict with policy CS14 in the LPP1 and DSP5, DSP6 and DSP40 in the LPP2.
67. The Authority cannot demonstrate a 5 year supply of housing land and policies which restrict housing development through such matters as settlement boundaries and gaps are out of date. They do not provide for the necessary housing to make provision for adequate housing in the area. However, those policies, which include CS14, CS22 and DSP6 do seek to protect the countryside and fulfil a purpose that is consistent with the Framework. The Council is seeking to address the shortfall and is making positive steps in that regard albeit there is dispute as to how successful that is. Nevertheless matters are moving forward and although there is still an outstanding shortfall, which even if I accept is as great as suggested by the appellant, is improving on historic figures and there appears to be greater opportunities for this situation to be improved further. I accept that Welbourne may well not be moving at the pace that has previously been suggested and not as quickly as the Council would suggest, but it is still moving forward and with a significant complex development of this nature matters will take time but once milestones are reached momentum is likely to quicken. Of particular relevance here is the determination of the extant application, which remains undetermined but continues to move forward. On the basis of the information before me the determination of this would be in the spring or middle of this year. Given the above I do not afford these particular policies the full weight of the development plan but I still accept that they have significant weight and the conflict with those policies that I have identified above still attracts significant weight in my planning balance.
68. I note that policy DSP5 reiterates national policy and reflects the statutory duty and is therefore accorded full weight and conflict with it, as I have found in this regard, is afforded substantial weight. 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. In the context of the harms I have identified which relate to landscape, heritage assets and best and most versatile agricultural land these result in conflicts with specific criteria in policy DSP40 for the reasons given above in respect of those matters and therefore there is conflict with the policy. These

are two significant policies where weight has not been reduced and the proposal when considered in the round is not in accordance with the development plan taken as a whole.

69. The ecological provisions payments and additional bird sanctuary are primarily mitigation requirements resultant from the proposed development and its likely potential effects and do not therefore substantively add a positive contribution to the overall balance.
70. The impact on the significance of the Grade II\* listed buildings is not outweighed by the public benefits of the scheme and therefore the additional harms related to landscape and BMVAL only add further to the weight against the proposal. The advice in the Framework supports the conclusions to resist the proposal. There are therefore no material considerations that indicate that a decision other than in accordance with the development plan would be appropriate.

**Overall conclusion**

71. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Christopher Boyle QC

Instructed by Woolf Bond Planning LLP

He called:

Jeremy Smith BSc  
(Hons), DipLA, CMLI  
Ignus Froneman  
B.Arch.Stud, ACIfA,  
IHBC

SLR Consulting Limited

Heritage Collective UK Limited

Stephen Brown BSc  
(Hons) DipTP MRTPI

Woolf Bond Planning LLP

### FOR THE LOCAL PLANNING AUTHORITY:

Paul Stinchcombe QC  
& Richard Wald

Instructed by Southampton and Fareham Legal  
Partnership

He called:

Andy Blaxland BA  
(Hons), DipTP, Dip Mgt,  
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Adams Hendry Consulting

Lucy Markham MRTPI  
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Philip Brashaw BSc  
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### FOR THE TITCHFIELD NEIGHBOURHOOD FORUM :

David Phelan

Titchfield Neighbourhood Forum

### INTERESTED PERSONS:

Nick Girdler  
Robert Marshall  
William Hutchison  
Linda Davies

Chairman Titchfield Village Trust  
Member of Fareham Society  
Chairman Hillhead Residents Association  
Local Resident

DOCUMENTS SUBMITTED AT INQUIRY BY APPELLANT

- APP1 Housing Land Supply Statement of Common Ground.
- APP2 Press Release dated 18 October 2018 from Fareham Borough Council.
- APP3 Appeal Decision letter APP/W3520/W/18/3194926.
- APP4 Habitats Regulations Assessment Screening & Shadow Appropriate Assessment prepared by CSA Environmental.
- APP5 Unilateral Undertaking dated 8 November 2018.
- APP6 Bundle of three Committee reports (P/17/1317/OA, P/18/0235/FP and P/18/0484/FP) confirming the Council's approach to Policy DSP40.
- APP7 Additional suggested conditions.
- APP8 Letter from Hampshire and Isle of Wight Wildlife Trust confirming their agreement to take on the land secured as the Bird Conservation Area in the Unilateral Undertaking.
- APP9 Closing submissions on behalf of the appellant.

DOCUMENTS SUBMITTED AT INQUIRY BY LOCAL PLANNING AUTHORITY

- LPA1 List of Appearances on behalf of the Council
- LPA2 Updated extract from 'The Buildings of England Hampshire: South', appendix 14b to Ms Markham's proof of evidence.
- LPA3 Conservation Area Appraisal and Management Strategy: Titchfield Abbey, Fareham Borough Council adopted sept 2013 – substitution for Core Document F11.
- LPA4 Appeal Decision letter APP/W1715/W/17/3173253.
- LPA5 Copy of Policies 1CO and 2CO from the Eastleigh Borough Local Plan.
- LPA6 Announcement from the Leader of Fareham Borough Council dated 5 November 2018.
- LPA7 S106 Obligations Justification Statement.
- LPA8 Opening submissions on behalf of the Council.
- LPA9 List of documents to be referred to during Evidence in Chief of Philip Brshaw.
- LPA10 List of documents to be referred to during Evidence in Chief of Lucy Markham.
- LPA11 Draft schedule of conditions.
- LPA12 e-mail from Strategic Development Officer Children's Services Department Hampshire County Council dated 8 November 2018.
- LPA13 Plan of route and points from which to view the site during the appeal site visit.
- LPA14 Closing submissions on behalf of the appellant.

DOCUMENTS SUBMITTED AT INQUIRY BY TITCHFIELD NEIGHBOURHOOD FORUM

- TNF1 Opening statement on behalf of Titchfield neighbourhood Forum
- TNF2 Email exchange with appellant regarding drainage dated 6 November including various attachments
- TNF3 List of documents referred to in Evidence in Chief of Mr Phelan
- TNF4 Closing Statement on behalf of Titchfeild neighbourhood Forum

DOCUMENTS SUBMITTED AT INQUIRY BY THIRD PARTIES

INQ1 Speaking note from Mr Girdler  
INQ2 Letter read out by Mr Marshal on behalf of The Fareham Society  
INQ3 Speaking note from Mr Hutcinson

DOCUMENTS SUBMITTED AFTER INQUIRY

PID1 Additional Environmental Information submitted by appellant under cover of letter dated 14 December 2018.  
PID2 Copy of Press notice of publication of Additional Environmental Information.  
PID3 Comments on Additional Environmental Information by Titchfield neighbourhood Forum.  
PID4 Comments on Additional Environmental Information by Fareham Borough Council.  
PID5 'Old Street' Appeal decision APP/A1720/W/18/3200409 submitted by Fareham Borough Council  
PID6 Fareham Borough Council comments on 'Old Street' decision.  
PID7 Appellant's comments on 'Old Street' decision.  
PID8 Natural England's (NE) consultation response on shadow Habitats Regulation Assessment as Statutory nature Conservation Body.  
PID9 Appellant's response to NE's consultation response (PID8) including an updated shadow Habitats Regulation Assessment.  
PID10 Titchfield neighbourhood Forum's response to NE's consultation response (PID8)  
PID11 Titchfield Neighbourhood Forum's comments on the Housing Delivery Test (HDT) results and the changes to the National Planning Policy Framework (the Framework).  
PID12 Fareham Borough Council's comments on the HDT results and the changes to the Framework.  
PID13 Appellant's comments on the HDT results and the changes to the Framework.  
PID14 Titchfield Neighbourhood Forum's final comments on HDT and Framework  
PID15 Appellant's final comments on HDT and Framework.

END



## Appeal Decision

Inquiry Held on 24 to 26 September 2019

Site visits made on 23, 25 and 26 September 2019

**by Grahame Gould BA MPhil MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 5 November 2019**

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**Appeal Ref: APP/A1720/W/19/3230015**

**Land to the east of Downend Road Portchester**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Miller Homes against the decision of Fareham Borough Council.
  - The application Ref P/18/0005/OA, dated 2 January 2018, was refused by notice dated 26 April 2019.
  - The development proposed is described as 'Outline planning application with all matters reserved (except the means of access) for residential development, demolition of existing agricultural buildings and the construction of new buildings providing up to 350 dwellings; the creation of new vehicular access with footways and cycleways; provision of landscaped communal amenity space, including children's play space; creation of public open space; together with associated highways, landscaping, drainage and utilities'.
- 

### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Miller Homes against Fareham Borough Council. That application is the subject of a separate Decision that will follow the appeal decision.

### Preliminary Matters

3. The Inquiry sat for three days between 24 to 26 September 2019. I made what the Planning Inspectorate refers to as an 'access required' visit to the site on 25 September when I was granted access to enter and view the site, rather than being accompanied by representatives for the appellant and the Council. I also made unaccompanied visits to the area within the vicinity of the appeal site on 23 and 26 September.
4. While the Inquiry finished sitting on 26 September, I adjourned it, as opposed to closing it to allow for the submission of: a certified copy of an executed Section 106 agreement (S106); the appellant's and the Council's closing submission in writing; some documents referred to by the parties in evidence (inquiry documents [IDs]); a final version of the inquiry position statement; and the appellant's written application for costs and the Council's response to that application. The Inquiry was closed in writing on 21 October 2019.

5. The S106 was received by the Planning Inspectorate on 3 October 2019 and it contains planning obligations concerning:
- the provision of 40% affordable housing within the development;
  - the implementation of improvements to the Cams bridge;
  - the undertaking of off-site highway works for alterations at the railway bridge in Downend Road and on the A27;
  - the payment of contributions for various off-site highway and transportation improvements and the implementation of an occupiers travel plan;
  - the provision of and the payment of maintenance contributions for public open and play space;
  - the payment of a contribution to mitigate the development's effects on off-site designated habitats; and
  - the payment of a contribution for school facilities in the area.

### **Main Issues**

6. The main issues are:
- whether the development would make adequate provision for pedestrian access via Downend Road and the effects of providing pedestrian access on the operation of Downend Road;
  - whether there would be accessibility to local services and facilities for the occupiers of the development by a range of modes of transport; and
  - the effects of the development on the integrity of the Portsmouth Harbour Special Protection Area and Ramsar Site, the Solent and Southampton Special Protection Area and Ramsar site and the Solent and Dorset Coastal Potential Special Protection Area (the designated habitats).

### **Reasons**

#### *Pedestrian access via Downend Road and effects on the operation of Downend Road*

7. Having regard to the wording of part a) of the reason for refusal, ie pedestrian use of Downend Road and any subsequent implications for the 'safety' of and 'convenience' of users of this road, and the evidence put to me, there are various matters that come within the scope of the consideration of this main issue. Those matters, which I consider below in turn, being: the pedestrian routes that would be available to occupiers of the development; the pedestrian demand (movements) and the distribution of those movements amongst the pedestrian routes; and the options for and effects of altering the railway bridge in Downend Road to accommodate the pedestrian movements arising from the development.
8. Inevitably there is some overlap between the matters of pedestrian movements and their distribution to be consider under this issue and the

wider accessibility to services and facilities that concerns the second main issue that I have identified.

Proposed pedestrian routes

9. The development would involve the construction of 350 dwellings to the north of a railway line, just beyond part of Portchester's established residential area. The development would have three pedestrian routes to and from it and they would be via: Downend Road, the westernmost of the routes (route A); Cams bridge, the central route (route B); and Upper Cornaway Lane, the easternmost route (route C).
10. Cams bridge crosses the railway line and currently provides access between the site and a small vehicle repair garage and The Thicket, the latter being a residential street. Separately planning permission has been granted for upgrading works to the Cams bridge to facilitate its use as a pedestrian route for occupiers of the appeal development. On the southern side of Cams bridge there is a tarmacked track leading off The Thicket. With the upgrading of Cams bridge route B would be a pedestrian route of an essentially urban character.
11. Route C would in part be reliant on the use of an unsurfaced, one metre wide and 200 metre or so length of a public right of way (footpath PF117), and Upper Cornaway Lane, a street providing access to the crematorium and some chalet type homes. Given the rural character of FP117 and its current suitability only for recreational use, some widening and surfacing works would be undertaken to it to enable it to be used more easily by residents of the proposed development.
12. Downend Road can be characterised as being a local distributor road<sup>1</sup>, with a two-way, daily flow of the order of 6,800 vehicles per day<sup>2</sup>. Pedestrians using route A and travelling to and from destinations south of the railway line would have to cross the railway bridge in Downend Road, following some alterations to the bridge being made, which are referred to in more detail below. That railway bridge has variously been described as providing a north/south or east/west crossing of the railway line and I shall hereafter only refer to it as an east/west crossing of the railway line and to drivers making eastbound or westbound crossings of the bridge. On the railway bridge and westbound of it, as far as the junction with the A27, Downend Road is subject to a 30mph speed limit. Immediately eastbound of the railway bridge the speed limit increases to 40mph.
13. In terms of accessing places of work and education, shopping and leisure facilities, public transport (Portchester railway station and bus stops along Portchester Road [A27]) and other services and facilities etc, it is agreed that some occupiers of the development would walk to and from the previously mentioned destinations. However, there is disagreement about the scale of the pedestrian demand and how it would be distributed amongst the three routes.

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<sup>1</sup> Paragraph 6.24 of Mrs Lamont's PoE

<sup>2</sup> Table 2.1 within Mr Wall's proof of evidence and paragraph 41 of Mr Litton's closing submissions for the appellant (ID21)

The pedestrian demand (movements) and the distribution of those movements

14. The appellant's most up to date estimate of the total daily pedestrian demand generated by the development would be nearly 700 movements per day, inclusive of walking trips to access buses and trains, 26.6% or so of all daily trips arising from the development<sup>3</sup>. By contrast the Council estimates that the number of daily single mode walking trips would be of the order of 284 trips, ie origin to destination trips excluding the use of buses or trains (CD10A). The parties agree for the purposes of estimating the development's pedestrian demand that data from the national travel survey 2018 (NTS2018) should be used to establish all trip generation, mode share and journey purpose. It is further agreed that the 2011 Census data should be used to determine the development's population.
15. However, there is disagreement between the appellant's and the Council's transportation witnesses<sup>4</sup> as to what flexibility should be used in applying the acceptable walking distance guidance stated by the Chartered Institution of Highways and Transportation (CIHT) in its guidelines for the 'Provision for journeys on foot' (CIHT2000 [CD25]). There is also a difference of opinion as to whether the mode share for walking to work recorded by the Census, ie 52% of the national level, should be used as a proxy when considering the propensity for all walking trips arising from the development. The consequence of those disagreements being whether local places of work, schools, shopping facilities etc would or would not be within walking range of the development, having regard to the alternatives offered by the three routes.
16. Mr Wall for the appellant is of the view that the suggested acceptable walking distances set out in Table 3.2 of CIHT2000 are dated and are being too rigidly applied by Mrs Lamont for the Council. The guidelines set out Table 3.2 are:

	Town centres (metres)	Commuting/school and sightseeing (metres)	Elsewhere (metres)
Desirable	200	500	400
Acceptable	400	1,000	800
Preferred Maximum	800	2,000	1,200

17. While it has been suggested that the acceptable walking distance guidelines stated in CIHT2000 are dated, given that they are nearly 20 years old, that concern does not seem to be borne out by the information contained within Table NTS0303 contained within NTS2018<sup>5</sup>. That is because between 2002 and 2018 the average walking trip length has remained constant at 0.7 miles (1.12 Km), while walking trips over a mile (1.6 Km) have consistently been of an average length of around 1.4 miles (2.25 km). Those national survey results suggest that individuals' attitudes towards walking trip

<sup>3</sup> Page 2 of CD10A and Paragraph 2.3.9b of Mr Wall's PoE

<sup>4</sup> Mr Wall for the appellant and Mrs Lamont for the Council

<sup>5</sup> Page 4 Appendix 1 of Mrs Lamont's PoE

lengths have not altered appreciably and that there is no particular issue with the currency of the guidance contained in Table 3.2 of CIHT2000.

18. In any event were the guidelines stated in CIHT2000 thought to be out of date, then I would have expected the CIHT to have revised them, either by issuing an amended version of CIHT2000 or publishing an entirely new document. Neither of those courses of action have been initiated by CIHT, with the publication of its 'Planning for Walking' guidance in 2015 (CD27 – CIHT2015) appearing to have provided an obvious opportunity for replacement acceptable walking distance guidelines to have been introduced. Instead CIHT2015 makes cross references to CIHT2000 in sections 4 and 6, which I consider to be a strong indication that CIHT was of the view that irrespective of the age of its acceptable walking guidelines, they continued to have currency. Mr Wall in giving his oral evidence stated that he was unaware of the CIHT undertaking any current review of CIHT2000.
19. Regardless of a walking trip's purpose the appellant contends that an upper ceiling distance of 2.4 Km (1.5miles) should be used. However, setting such a distance is inconsistent with what is stated in CIHT2000 and the average walking trip lengths reported in the NTS2018 and I therefore consider it should be treated with some caution. The wider disagreement about the overall number of pedestrian movements that would be generated is something I shall return to in providing my reasoning for the second main issue. However, in the context of the consideration of the utility of route A, I consider that the walking trips of most significance would be those to and from Cams Hill Secondary School (the school) and the Cams Hall employment site (CHes). That is because the school and the CHes would or would very nearly meet the 2,000 metre preferred maximum distance guideline for walking journeys for schools and commuting stated in CIHT2000.
20. As it is highly unlikely that route C would be used to get to or from either the school or the CHes, there is no need for me to make any further reference to it in considering this main issue.
21. The parties are now agreed that the development would generate 35 or 36 pedestrian crossings of the Downend Road bridge per day, an increase of between 83% and 86% on the present situation<sup>6</sup>. Of the new crossings there is agreement that 24 would be for the purpose of travelling to and from the school. However, unlike the Council, the appellant contends that no use of route A would be made by commuters walking to or from a place of work<sup>7</sup>.
22. There is some disagreement as to whether the CHes would be 2,000 or 2,100 metres from the development. I consider that a 100 metre (5%) difference would not act as a significant deterrent for pedestrians using route A. That is because the time to walk an extra 100 metres would not be great and for a walker using either routes A or B and it would probably be necessary to time the duration of the alternative walking trips to be aware of any meaningful difference between them. Having walked routes A and B, and presuming that a safe pedestrian crossing for the Downend Road railway bridge would be available, I consider that qualitatively there would be very little to differentiate route A from B. I also consider there would be potential

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<sup>6</sup> Page 5 of CD10A

<sup>7</sup> In the zero entry against commuting/business trips in the upper table and supporting text on page 3 of CD10A and in Tables 10 and 11 included in Appendix C to Mr Wall's PoE

for commuters walking between the development and the CHes to vary their routes, to avoid monotony, and to use either route A or B. I am therefore not persuaded that route B would automatically be favoured ahead of route A by those walking to and from the CHes.

23. So, unlike the appellant, I consider it incorrect to discount commuters from walking to or from CHes via route A. I therefore consider that there would be potential for more pedestrian use of Downend Road railway bridge than has been allowed for by the appellant. I also consider that as there is access to the circular countryside public footpath route just beyond the railway bridge that there would be potential for additional recreational walkers, originating from the existing built up area, to be drawn to Downend Road resulting in some additional crossings of the bridge. That is because the provision of enhanced pedestrian facilities would make it safer to cross the bridge and the bridge's existing condition may well be acting as a detractor for recreational walkers.

The five options considered at the application stage for altering the Downend Road railway bridge

24. To accommodate additional pedestrian crossings of the railway bridge in Downend Road there is no dispute that alterations would need to be made to this bridge. That is because the existing bridge only provides a very rudimentary refuge for pedestrians, in the form of a very narrow margin, tantamount to a 'virtual footway', that comprises a strip of tarmac demarcated by a white painted line.
25. To address the additional demand for pedestrian crossings of the bridge the appellant when the appealed application was originally submitted put forward three options for alterations (options 1 to 3). Option 1 would involve the introduction of a formalised virtual footway and has been discounted by Hampshire County Council (HCC). Option 2 would involve the provision of a 1.2 metre wide traditional (raised) footway, with a carriageway width of around 4.8 metres. Option 3 would involve the provision of a 2.0 metre wide footway and a reduction in the width of the carriageway to form a single lane of 3.5 metres and would involve the introduction of a shuttle working arrangement, with the signed priority being in favour of the eastbound stream of traffic. HCC in offering its advice to the Council<sup>8</sup> expressed no preference for either options 2 or 3, with it stating that the final decision on which option should be pursued being deferred until a post planning permission public consultation exercise had been completed.
26. Following the decision of the Council's planning committee to defer the determination of the appealed application in order to enable further consideration to be given to the alteration of the railway bridge, two further options were put forward by the appellant. The first of those, option 4, would be similar to option 3, albeit that in substitution for signed priority vehicles would be controlled by traffic signals. HCC are reported as raising no in principle concern with option 4, albeit it indicated that this option would entail greater driver delay, including unnecessarily during off peak periods, and a maintenance liability, such that options 2 and 3 remained preferable to the highway authority<sup>9</sup>.

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<sup>8</sup> Letter of 29 August 2018 (contained within CD2)

<sup>9</sup> Paragraph 3.2.6 in the i-Transport Technical Note of 28 February 2019 and entitled 'Downend Road Railway Bridge – Review of Pedestrian Options' (CD29)

27. Option 5 would involve no footway provision, with the carriageway available to vehicles crossing the bridge travelling in opposite directions at the same time being 5.0 metres. There would also be 300mm wide margins to protect the parapets on each side of the bridge<sup>10</sup>. Additionally, traffic signals would be installed so that when pedestrians sought to make a bridge crossing they would initiate an all red phase for both eastbound and westbound drivers, making the bridge a pedestrian only area for so long as pedestrians were crossing it. HCC are reported as considering option 5 to be a unique and unsafe means for controlling shuttle working at the bridge and rejected it (CD2<sup>11</sup>). However, HCC's advice to the Council concerning Option 5 appears to have been on the basis that it would involve shuttle working, as opposed to two way working. In this regard HCC is reported as commenting:

*'As such drivers unfamiliar with the site may not expect opposing vehicles to be on the bridge at the same time (both directions on a green signal). This situation is exacerbated by the carriageway width on the bridge which in this controlled situation would encourage drivers to take a more central position in the carriageway. Consequently vehicles may meet each other on the bridge'.* (Appendix 2 of committee report of 24 April 2019 [CD2])

However, HCC's comments regarding option 5 appear to have been made on an erroneous basis, with it having put forward as an alternative to shuttle working. It is therefore unclear what HCC's views on option 5 would have been had it not been treated as being an 'unconventional arrangement'<sup>12</sup>, given its apparent misunderstanding about what this option would entail. It would also appear that the appellant did nothing to bring this misunderstanding to HCC's attention.

28. The Council's determination of the planning application was therefore based on options 2 and 3 being for its consideration and it contends that option 2 would be unsafe for pedestrians, while option 3 scheme would unacceptably affect the safety and convenience of road users. I now turn to the detailed consideration of options 2 and 3.

#### Option 2

29. The railway bridge provides poor facilities for pedestrians crossing it. I recognise that in general terms the provision of a 1.2 metre wide footway on the Downend Road bridge under option 2 would represent an improvement in safety terms compared with the prevailing situation, however, I consider that cannot reasonably be said of the post development situation. That is because the development would be a significant new generator of vehicles crossing the bridge, with the parties agreeing that the development would give rise to a 22% increase in traffic flows on the bridge<sup>13</sup>. Those extra bridge crossings is something that needs to be accounted for when considering whether option 2 would provide a safe environment for the existing and prospective pedestrian users of the bridge.

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<sup>10</sup> As clearly depicted in the cross section contained in Image 3.2 and drawing ITB12212-GA contained in CD29

<sup>11</sup> The summary of HCC's comments to the Council included as Appendix 2 of the Council's committee report of 24 April 2019

<sup>12</sup> Paragraph 3.3.6 in CD29

<sup>13</sup> Page 5 of CD10A

30. I am of the view that a 1.2 metre wide footway under option 2 would not provide a safe bridge crossing facility for pedestrians, having regard to both the increases in vehicular and pedestrian crossings of the bridge, with the development being a new origin/destination for both categories of travellers, particularly during the peak hours for the making of commuting trips and/or school journeys. It is also likely that the pedestrians using the bridge would be likely to be a mixture of adults and school aged children. Given that the demand for additional bridge crossings would largely come from commuters and school children, I consider that activity would be more likely to coincide with AM and PM peaks and would not be evenly spread throughout the day. In saying that I recognise that working hours can be staggered and out of teaching hours' activities occur at schools, but those activities would only give rise to some walking trips for occupiers of the development outside the core peak hours.
31. Having regard to the guidance on footway widths stated in the Department for Transport LTN1/04 'Policy, Planning and Design for Walking and Cycling'<sup>14</sup> and Manual for Streets (MfS - CD23), a footway of 1.2 metres width would be considerably narrower than the generally preferred minimum 2.0 metres referred to in paragraph 6.3.22 of MfS. While the guidance is not expressed in absolute terms the footway to be provided as part of option 2 would potentially be used by a variety of pedestrians, ie adults, children, with or without any impairment. However, a footway of 1.2 metres in width would only just be wide enough for an adult and a child to walk side by side, but would not accommodate two adults with a push chair walking side by side in the same direction or an adult and a wheelchair user side by side, based on the details provided in figure 6.8 of MfS.
32. Regard also needs to be paid to pedestrians travelling in opposite directions wishing to cross the bridge at the same time. In that regard I recognise that as far as pedestrians travelling from or to the development in the peak hours are concerned the bulk of those users would be travelling in the same direction and that this demand for the footway's use would not generate opposing movements. However, there are already users of the bridge and many of them will be making trips across the bridge in the opposite direction to pedestrians leaving or returning to the development. There would therefore be potential for opposing crossings of the bridge to be made at the same time, creating a conflict situation. I consider it cannot be assumed that when directional conflicts arose that one party would give way to the other and with such a narrow footway that would make the use of the carriageway a possibility, bringing pedestrians into conflict with vehicles.
33. Under the prevailing situation, I observed cars frequently encroaching beyond the centre line on the bridge whether there were or were not any pedestrians on the bridge. My seeing cars crossing over the centre line irrespective of whether pedestrians are crossing the bridge is also consistent with the screenshot images included in the appellant's evidence, for example those in appendix A of the appellant's Technical Note of 28 February 2019. All of which is also consistent with the advisory road signs on either side of the bridge warning of oncoming vehicles being in the middle of the road.

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<sup>14</sup> Appendix X to Mr Wall's PoE

34. I therefore find difficult to envisage how that driver behaviour would not continue to be replicated with an increased number of vehicular crossings of the bridge, following a reduction in the carriageway width for vehicles under option 2. That in turn could result in eastbound vehicles needing to mount the footway or their nearside wing mirrors encroaching into the space above the footway. So, under a scenario of vehicles crossing in opposing directions at the same time as pedestrians were also making use of the bridge there would be the potential for the safety of pedestrians to be unacceptably prejudiced.
35. The appellant has sought to justify the provision of a 1.2 metre wide footway, on the basis of having undertaken a 'Fruin' assessment, to judge the level of service this footway would afford its users. However, the extract of the paper written by Mr Fruin submitted at the inquiry (ID5<sup>15</sup>) refers to 'channel's (footways) upwards of 1.8 metres (6 feet) in width having been assessed. I therefore consider that the Fruin methodology has very limited applicability to a footway under option 2 that would be two thirds of the width of the footway referred to in ID5. I therefore find this aspect of the appellant's case does not justify the provision of a 1.2 metre wide footway.
36. While other instances of narrow footways at bridges/archways in Hampshire have been drawn to my attention in evidence<sup>16</sup>. However, those examples do not appear to be directly comparable with the appeal proposals and in any event it is the acceptability of otherwise of the latter that I need to consider.
37. I also find it surprising that HCC considers a 1.2 metre wide footway would be appropriate on a road subject to around 6,750 daily vehicle movements, when the appellant is intending the main and secondary estate roads within the development would have 2.0 metre footways<sup>17</sup>.
38. I therefore consider that option 2 should be discounted as an appropriate alteration to the Downend Road railway bridge for safely accommodating the additional pedestrian use of the bridge that would arise from the development.

### Option 3

39. The appellant's modelling of the effect of option 3's operation traffic flows is heavily reliant on the use of the 'ARCADY' software, that software normally being used to assess the operation of roundabouts. In this instance ARCADY has been set up with a 'dummy arm' as a work around to simulate the operation of eastbound priority shuttle working at the railway bridge. Using ARCADY, the appellant has estimated that in the AM peak hour, the average queue length would be 3.3 vehicles amounting to a delay of 23 seconds<sup>18</sup>.
40. I have never previously come across ARCADY being used for any purpose other than modelling the operation of roundabouts. I therefore find it surprising that HCC, in providing its comments to the Council (included in CD2), did not question ARCADY's use in assessing the operation of shuttle working at a bridge. I consider it unsurprising that the Transport Research Laboratory (TRL), as the developers/product owner of ARCADY, has cast significant doubt on the suitability of its model for assessing a scenario such

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<sup>15</sup> Designing for pedestrians a level of service concept

<sup>16</sup> Appendix X of Mr Wall's PoE and ID11

<sup>17</sup> Paragraph 2.4.2 of the Transport Assessment (CD15)

<sup>18</sup> Page 9 of CD10A

as option 3 because of an issue of dealing with `... the lag times once a vehicle is in the narrowing ...'<sup>19</sup>. So, while HCC appears to have voiced no concerns about ARCADY's suitability, I consider that very little weight should be attached to it for the purposes of assessing the effect of option 3 on the safe and free operation of Downend Road. I also consider it of note that TRL has stated that its PICADY modelling tool, which is designed to model the operation of priority junctions, is also unsuitable for modelling option 3, with TRL referring to its TRANSYT traffic signal software as being more suitable<sup>20</sup>, albeit still something of a work around.

41. In response to the limitations of the appellant's modelling of option 3, the Council has used microsimulation software to assess the operational effects of option 3. That software 'Paramics Discovery Version 22' (PDV22) being a microsimulation model that includes a module, introduced around six months ago<sup>21</sup>, and which has a specific module capable of modelling road narrowings<sup>22</sup>. As a worst case the Council's running of PDV22 predicts that during the AM peak period queues of up to 36 vehicles might extend back from the westbound vehicle give way point and result in westbound traffic being delayed by up to 17 minutes<sup>23</sup>.
42. Given the recent introduction of PDV22 its track record is limited and the appellant has raised concerns about the reliability of PDV22. In that regard it has been argued that the Council's running of PDV22 has not been correctly calibrated for the circumstances of option 3 and that its output results cannot be validated. Mr Wall in cross examination contended that PDV22 appears to have been developed without being informed by driver behaviour. However, producing a model that was incapable of replicating driver behaviour would seem a nonsensical exercise for the product supplier. Given that PDV22 has been developed to assess the operation of a highway under the circumstances of vehicles in one flow giving way to an opposing flow of vehicles at a road narrowing, I consider that very little weight should be attached to the proposition that this software had been developed without regard to driver behaviour.
43. Mr Wall is not a 'modelling expert'<sup>24</sup> and has placed some reliance on the findings of a study undertaken by the TRL for the Department of Transport to support his use of ARCADY and to critique the Council's running of PDV22. The findings of the TRL study were reported in 1982 in a paper entitled 'The control of shuttle working on narrow bridges' (TRL712)<sup>25</sup>. To assist with critiquing the running of PDV22 the appellant has engaged a consultancy specialising in microsimulation modelling, Vectos Microsim Limited (Vectos), and a video file of the model runs Vectos has performed, as well as written advice it has given to the appellant, has been submitted as part of the appellant's evidence<sup>26</sup>. In response to the critique of PDV22 the Council has supplemented its evidence through the submission of a video file for its

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<sup>19</sup> Email from Jim Binning of TRL to Mayer Brown of 23 August 2019, included in Appendix RVL4 appended to Mrs Lamont's rebuttal statement

<sup>20</sup> Email from Jim Binning of TRL to Mayer Brown of 9 August 2019, included in Appendix RVL4 appended to Mrs Lamont's rebuttal statement

<sup>21</sup> Mrs Lamont in during cross examination

<sup>22</sup> Matter of agreement stated on page 8 of CD10A

<sup>23</sup> Mrs Lamont's rebuttal statement

<sup>24</sup> Email of 23 September 2019 to the Planning Inspectorate from Mrs Mulliner on the appellant's behalf

<sup>25</sup> Appendix K to Mr Wall's PoE

<sup>26</sup> Appendix P to Mr Wall's Rebuttal Statement, Note from Vectos of September 2019 entitled 'Paramics modelling - comments on Sysra review and Mayer Brown rebuttal', ID12 and ID15

- running of PDV22 and written comments from the software's developer, Systra<sup>27</sup>.
44. For the AM peak period and using PDV22 the appellant estimates that the average westbound queue length would be 6.5 vehicles, with the average delays westbound and eastbound respectively being 43 and 10 seconds<sup>28</sup>.
  45. The disagreement about whether the running of PDV22 has reasonably represented the operation of option 3, essentially revolves around the behavioural response of westbound drivers to the signed priority and whether that response would cause significant queuing and driver delays. In that regard the appellant contends that the signed priority has been modelled too rigidly and would not be reflective of actual driver behaviour. It is therefore argued that the Council's prediction of the severity of the westbound queuing and delay times would be unrealistic. That is because TRL712 records that when signed priority shuttle working is in place drivers that do not have the priority only give some measure of preference to drivers in the opposing stream. That resulting in drivers without the priority experiencing around 65% of any delay, while the opposing drivers experience around 35% of any delay.
  46. While the appellant has sought to attach significant weight to the findings reported in TRL712, this report of study provides very little information about the computer modelling that was performed and the frequency and duration of the observations of driver behaviour that was undertaken at the two bridge locations that were used.
  47. With respect to the computer model referred to in TRL712, were that model to be of wider utility than just perhaps for conducting this study, I would have expected that it would be known to HCC and could have been drawn to Mr Wall's attention during the pre-application and/or application discussions that took place. I say that because within Hampshire road narrowing at bridges/archway is not uncommon, given the examples cited in Mr Wall's evidence and my own observations in determining various unrelated appeals elsewhere in this county. In a similar vein when the previously mentioned email exchange took place between representatives of the TRL and a colleague of Mrs Lamont about software suitability, if the model used in the 1982 study was of utility today then the TRL could have drawn it to the attention of Mrs Lamont's colleague. Instead of that there is reference to the TRL planning to develop new software to model shuttle working. Whatever form the model used in 1982 took, given the advances in computing that have occurred in the last 37 years, it is unlikely it would bare comparison with modern day software.
  48. With respect to the bridge locations used in the 1982 study, in the final paragraph in section 3.2 of TRL712 it is stated that traffic flow rates at the bridges and the proportions of traffic crossing the bridges in each direction were different. Those differences could have had implications for the observed driver behaviour that was used to validate the output from the running of the model used in this study.
  49. In the time since TRL712's publication there have been significant changes in vehicle technology, most particularly in terms of braking and engine

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<sup>27</sup> Mrs Lamont's Rebuttal Statement, including Appendix 3, ID9, ID10 and ID14

<sup>28</sup> Page 9 of CD10A

technology, which have implications for acceleration and deceleration rates. Vehicle performance is now very different and would not necessarily be reflected in the modelling undertaken as part of the 1982 study. I am therefore doubtful as to whether the acceleration rates used for the purposes of a study undertaken in 1982 can be relied upon today.

50. With respect to the observance of priority signage, much has been made of the Council's PDV22 model runs being too cautious, with it being argued that the modelled driver behaviour would be more akin to that of 'strictly enforced' priority in the language of TRL712. However, option 3 would entail the installation of 'give way' lines and signage clearly indicating that drivers should give way to on-coming traffic. That signing arrangement would in effect be very similar to what is found in the case of a side road forming part of a 'priority junction' where give way signage and road markings are in place, which are routinely observed without strict enforcement. I consider normal driver behaviour is to observe the instructions or warnings appearing on traffic signs, whether they be of a prohibitive or warning type.
51. I therefore consider it reasonable to expect that westbound drivers faced with priority give way signage would take heed of that signage and thus approach the bridge with caution and would avoid commencing a crossing if there was any doubt that it could not be completed safely. So, on approaching the give way point and when there were no eastbound vehicles on the bridge, a driver would need to decide whether there would be enough time to complete a crossing of the bridge before encountering a vehicle travelling in the opposing direction.
52. There is some disagreement as to how much time a driver would deem necessary to make a safe crossing of the bridge, with it also being argued that in working out the time needed westbound drivers would also make a calculation as to whether their crossing of the bridge would unreasonably delay an eastbound vehicle's crossing of the bridge. It being argued, in line with findings reported in TRL712, that if a westbound driver decided its actions would delay an eastbound vehicle then the former would not proceed.
53. In terms of the decision making to be made by westbound drivers, I consider the normal behaviour would be to decide whether a crossing could safely be made, with any decision making about whether their actions would cause delay for a driver travelling in the opposite direction only being a secondary concern. That is because while a westbound driver would be able to judge how long they would need to cross the bridge, they would be unlikely to be able to make the calculation when precisely an eastbound vehicle would arrive at the point where its driver would want to commence its crossing and what any delay caused to the driver of the eastbound vehicle would be.
54. I recognise that some westbound 'platooning' would be likely to arise. That is one vehicle or a group of vehicles following immediately behind another/other westbound vehicle/vehicles already crossing the bridge, irrespective of whether there might be an eastbound vehicle waiting to make a crossing of the bridge. However, I consider the number of vehicles making crossings during an individual platooning event would not necessarily be as great as argued by the appellant. That is because there would come a point at which a westbound driver would decide to observe the priority signage, rather than continue a sequence of not observing it, given that being behind a line of

crossing vehicles it would not necessarily be possible to see whether an eastbound vehicle with priority was waiting to make a crossing. So, while some platooning would arise and would have the potential to reduce westbound queuing and delays, I am not persuaded its occurrence and delay reducing potential would be of the significance claimed by the appellant.

55. As I have indicated above there is very limited information contained within TRL712 about the precise nature of the observation of drivers at narrow bridges, ie how many times driver observations were undertaken and how long they were. I therefore have concerns about driver delay under option 3 being applied on the basis of 35% and 65% respectively for drivers with and without the signed priority, as per the finding reported in TRL712. That being something the appellant has done in critiquing the Council's running of PDV22 to arrive at its finding that if this software is used then in the AM peak period the average westbound queuing length would be 6.5 vehicles and the delay would be of the order of 43 seconds<sup>29</sup>. The Council's review of the appellant's running of PDV22 suggests that the average maximum westbound queue length could be around 20 vehicles at 07:50 AM (ID10).
56. However, it appears that an unintended consequence of the appellant's rebalancing of the priority to replicate a 35%/65% delay split, is the build-up of eastbound queuing in the absence of much westbound traffic, as is apparent from the 07:46:25 screenshot contained in ID9B. Additionally, vehicles travelling in opposing directions crossing the bridge at the same time would appear to have arisen, as shown in some of the screenshots contained in ID9B.
57. For all of the reasons given above I am therefore not persuaded that much weight should be attached to the findings reported in TRL712 for the purposes of calibrating or validating runs for either PDV22 or for that matter ARCADY.
58. It is contended that the PDV22 model runs undertaken by the Council have been incorrectly calibrated. However, the review of those runs undertaken by Systra has not highlighted any fundamental errors in the way its model has been built and run on the Council's behalf. I am therefore inclined to attach greater weight to the commentary on the model's running provided by Systra than Vectos. That is because Systra, as software designer, could be expected to know precisely what its model is intended to do and whether its running by a 'client' has been appropriate, when consideration is given to the parameters needed to run the software.
59. While PDV22 is a new model and may well become subject to some refinement as more use is made of it, on the basis of everything put to me in evidence about it, I consider its use is more appropriate to that of ARCADY. That is because PDV22 has been designed to address narrow road situations, ARCADY is intended to model circulatory road movements and the TRL has advised that ARCADY is not an appropriate tool to model the operation of option 3.
60. While the queuing and delays under option 3 predicted by the Council's running of PDV22 may be somewhat exaggerated, I consider no reliance should be placed on the appellant's ARCADY assessments. In practice the effect on the flow of traffic associated with option 3's introduction would be

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<sup>29</sup> Page 9 of CD10A

likely to somewhere between the range of the results yielded by the appellant's and the Council's running of PDV22. That would be likely to result in queue lengths and driver delay exceeding the AM peak period occurrences that HCC found to be unacceptable when it concluded that the traffic light controlled option 4 would be unacceptable, ie mean maximum queuing of nine vehicles and delays westbound and eastbound respectively of 36.8 and 32.4 seconds<sup>30</sup>.

61. On the basis of the evidence before me I consider that the introduction of option 3 would result in unacceptable levels of queuing and delay for vehicular users of Downend Road.
62. The Council contends that the visibility splay falling within land within the appellant's control would be inadequate for drivers turning right from the development's access onto Downend Road. While a visibility splay that would be fully compliant with the most recent guidance, ie that contained in ID6<sup>31</sup>, would encroach onto third party land, that land comprises undeveloped land, including a ditch. It is therefore unlikely that any development would arise within the third party land, so close to the edge of the highway, as to affect the visibility for drivers emerging from the development's access. I therefore consider that there would be adequate visibility for drivers turning right out of the development's access and that 'edging out' type movements would be unlikely to cause any significant conflicts between drivers emerging from the site access and westbound road users approaching to the give way point proposed under option 3.
63. Concern has also been raised that the introduction of option 3 would adversely affect the vehicular access used by the occupiers of 38 Downend Road (No 38). No 38 lies immediately to the south of the railway line and has a double width dropped kerb providing access to this dwelling's off-street parking. The visibility for drivers emerging from No 38 is already affected by the railway bridge's parapet.
64. The works associated with the implementation of option 3 would have some implications for the manoeuvring for drivers turning right from No 38. However, I consider the new situation would not be greatly different to the existing one and introducing a shuttle working layout would have very little effect on the forward visibility for vehicles emerging from No 38 because there would be no alterations to the railway bridge's parapet. Regard also needs to be paid to the fact that in any given day the number of vehicle movements associated with No 38's occupation would be quite limited, given this access serves a single property. I consider it of note that the safety auditing that has been undertaken to date has not highlighted any particular safety concerns for vehicles emerging from No 38's access associated with the design of option 3.
65. I am therefore not persuaded that the introduction of option 3 would have any adverse effect on the use of No 38's access.

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<sup>30</sup> Table 3.1 in CD29

<sup>31</sup> Junction visibility extract from Design Manual for Road and Bridges CD123 Revision 0 (August 2019)

Conclusions on pedestrian access via Downend Road and effects on the operation of Downend Road

66. For the reasons given above I found that the 1.2 metre wide footway to be provided as part of option 2, would not provide a safe facility for its users.
67. Option 3 through the narrowing of the carriageway to 3.5 metres would provide a safe pedestrian route. However, the narrowing of the carriageway would be likely to result in vehicle queuing and delay during the AM peak period. The precise degree of that queuing and delay is the subject of considerable disagreement, with it having proved quite difficult to model. That is because when Mr Wall prepared the original transport assessment (CD15) there appears to have been no readily available software capable of modelling a road narrowing such as that envisaged under option 3. That led to the use of ARCADY, which as I have explained above, I consider cannot be relied upon, not least because the TRL has stated that it is not suited to modelling shuttle working. In connection with presenting its appeal case the Council has used the comparatively new and not widely tested PDV22, the running of which suggests that considerable vehicle queuing and driver delay could be encountered by westbound vehicular traffic.
68. The appellant has sought to persuade me that the results from the Council's running of PDV22 should not be relied on because it has been set up to run with parameters that are exaggerating vehicle queuing and driver delay because the observation of the signed priority by westbound traffic has been too rigid. The appellant's critique of PDV22 in no small measure relies on computer modelling and behavioural observations at narrow bridges undertaken in connection with the TRL712 study dating back to 1982. However, for the reasons I have given above I have significant reservations about how meaningful the findings reported in TRL712 are today.
69. I recognise that the Council's running of PDV22 may have generated unduly pessimistic queuing lengths and delay times. That said I consider more credence can be attached to the Council's running of PDV22 than either the appellant's running of ARCADY or the appellant's modified running of PDV22, the latter understating the reasonable observance of the signed priority that would underpin the functioning of option 3. The degree of vehicle queuing and driver delay would probably be somewhere between levels estimated through the appellant's and the Council's running of PDV22. Given that the scale of the delay may well exceed that which led HCC to believe that a traffic light variant of option 3, ie option 4, should be discounted. I therefore consider that option 4 may well have been prematurely discounted by HCC. That is because HCC accepted option 3 as being a safe and efficient option, based on modelling reliant on the use of ARCADY.
70. Much has been made of HCC being accepting of both options 2 and 3, but as I have said above, I consider those options have pedestrian safety and capacity shortcomings. I am not persuaded, on the evidence available to me, that I should accept that because HCC has raised no objection to options 2 and 3 then either would be acceptable.
71. A fifth option (option 5) that would retain a two-way traffic flow, without a footway being provided or a narrowing of the carriageway, with an all pedestrian zone activated by traffic lights, on demand by pedestrians wishing to cross the bridge, was put forward prior to the appealed application's

determination. However, option 5 appears to have discounted on safety grounds by HCC on the erroneous premise that it would involve the operation of an unusual form of shuttle working. I therefore consider that option 5 may also have been prematurely discounted by HCC because of a fundamental misunderstanding of the way in which it would function.

72. On this issue I conclude that the development with the implementation of option 2 would make inadequate provision for pedestrian access via Downend Road, while the implementation of option 3, in making adequate provision for pedestrian users of Downend Road, would unacceptably affect the operation of this road because of the vehicle queuing and driver delay that would arise. The development would therefore be contrary to the second criterion of Policy CS5 of the Fareham Core Strategy of 2011 (the Core Strategy) insofar as when the development is taken as a whole it would generate significant demand for travel and were option 2 to be implemented it would not provide a good quality walking facility for its occupiers. The development, were option 3 to be implemented, would also be contrary to Policy CS5 (the second bullet point under the third criterion) because it would adversely affect the operation of Downend Road as a part of the local road network.
73. There would also be conflict with Policy DS40 of the Fareham Local Plan Part 2: Development Sites and Policies of 2015 (the DSP) because the implementation of option 3 would have an unacceptable traffic implication.
74. I also consider that there would be conflict with paragraph 109 of the National Planning Policy Framework (the Framework) because the implementation of option 3 in safeguarding the safety of pedestrians would give rise to a residual cumulative effect, vehicle queuing and driver delay, that would be severe for the road network. The development would also not accord with paragraph 110c) of the Framework because the implementation of option 2 would create a place that would not be safe because of the conflict that there would be between pedestrians and vehicles through the provision of an unduly narrow footway within part of the public highway.

#### *Accessibility to services and facilities*

75. The development would be on the edge of Portchester's already quite intensively built up area and it would adjoin an area that is predominantly residential in character. The existing development in the area lies to the south of the M27 and is on either side of the A27 corridor, which essentially follows an east/west alignment.
76. As I have previously indicated there is considerable disagreement about the site's accessibility to local services and facilities by non-private motorised modes of travel. In that regard the appellant is of the view that the development would generate in the region of 650 pedestrian movements per day, while the Council places that figure at a little short of 300 movements. Central to that disagreement is whether the distance there would be between the new homes and places of work and education, shopping, leisure and public transport facilities (the local facilities and services) would be too far as to be accessible by walking trips.
77. Figure T2 in the originally submitted Transport Assessment (page 66 of CD15) identifies where the local services and facilities are relative to the appeal site. Many of those service and facilities are clustered around Portchester's

shopping/district centre. When regard is paid to the various tables within Appendix C of Mr Wall's proof of evidence it is apparent that many of the local services and facilities shown in Figure T2 would be at distances from the development that would exceed the 'acceptable walking distances' referred to in CIHT2000 (CD25).

78. The three proposed pedestrian routes, A, B and C, would variously provide egress and ingress from the development. However, routes A, B and C would be of varying levels of attractiveness. In that regard I consider route C would not be particularly attractive because the section comprising footpath FP117 would be unlit and that would affect its general utility after darkness, particularly for commuters on their return from Portchester railway station. Generally, the use of all three routes would entail walking trips that would exceed the CIHT2000 guidelines for travelling to and from town centres, while the railway stations in Portchester and Fareham would not be within a comfortable walking distances from the development. The access to bus stops in the area would exceed the 400 metre guideline recently reaffirmed by the CIHT in its 'Buses in urban developments' guidance of January 2018 (CD28).
79. So, I think it reasonable to say that the development would fall short of being particularly accessible by transportation modes other than private motor vehicles. In that regard the appellants' estimates for the number of non-private motor vehicle trips may well be quite optimistic. That said this development would be close to many other dwellings in Portchester and the accessibility to local services and facilities would be similar to that for many of the existing residents of the area. Given the existing pattern of development in the area, I consider there would be few opportunities for new housing to be built in Portchester on sites that would be significantly more accessible than the appeal site, something that the maps in Appendix R to Mr Wall's proof of evidence show. In that regard it is of note that the Council is considering allocating this site for development in connection with the preparation of its new local plan.
80. On this issue I therefore conclude that there would not be an unreasonable level of accessibility to local services and facilities for the occupiers of the development by a range of modes of transport. I therefore consider that the development would accord with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP because it would not be situated in an inaccessible location and it would be well related to the existing urban settlement boundary for Portchester.

#### *Effects on the designated habitats*

81. The appellant, the Council and Natural England (NE) are agreed that the development would be likely to have a significant effect on the designated habitats, namely in-combination effects associated with: increased recreational activity in the Portsmouth Harbour Special Protection Area (SPA) and the Solent and Southampton Water SPA; and the increased risk of flooding in the Portsmouth Harbour SPA and Ramsar site and the Solent and Dorset Coast candidate SPA. Additionally, there would be potential for the development to have a significant effect either alone or in combination with other developments arising from nitrogen in waste water being discharged into the designated habitats.

82. Under the provisions of Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended) (the HRs), there is a requirement to undertake a screening assessment to determine whether a development alone or in combination with others would be likely to have a significant effect on integrity of the internationally important interest features that have caused a habitat to be designated. Having regard to the ecological information that is available to me, including the statement of common ground signed by the appellant, the Council and NE (CD13) I find for the purposes of undertaking a screening assessment that this development in combination with others would be likely to have a significant effect on the interest features of the designated habitats through additional recreational activity and the risk of flooding.
83. With respect to the matter of additional nitrogen in waste water being discharged into the designated habitats, I am content, on the basis of the nitrogen balance calculation included as Appendix 4 in CD13, that the development would not give rise to an increased discharge of nitrogen within the designated habitats.
84. Having undertaken a screening assessment and determined that there would be a significant effect on the designated habitats, I am content that mitigation could be provided so that the integrity of the qualifying features of the designated habitats would be safeguarded. The nature of the necessary mitigation has been identified in CD13 and would take the form of the payment of a contribution to fund management measures identified in the Solent Recreation Mitigation Strategy of 2018 and the imposition of planning conditions to avoid the development causing flooding in the area. The necessary financial contribution forms one of the planning obligations included in the executed S106.
85. In the event of this appeal being allowed I consider the imposition of conditions requiring: the incorporation of a sustainable drainage scheme within the development; the implementation of construction environmental management plan that included measures to preclude the pollution of the waters within the designated habitats during the construction phase; and a limitation on water usage for the occupiers of the development would be necessary and reasonable to safeguard the integrity of the designated habitats.
86. I therefore conclude that the development, with the provision of the mitigation I have referred to above, could be implemented so as to safeguard the integrity of the designated habitats. In that respect the development would accord with Policy CS4 of the Core Strategy and Policies DSP13 and DSP15 of the DSP because important habitats would be protected.

## **Other Matters**

### *Housing Land Supply*

87. The Council cannot currently demonstrate the availability of a five year housing supply (5yrHLS), with it being agreed that the current five year requirement is 2,730 dwellings. However, there is disagreement as to what the quantum of the 5yrHLS shortfall is when regard is paid to the supply of deliverable sites for homes, having regard to the definition for 'deliverable' stated in Annex 2 of the Framework. That definition stating to be considered deliverable:

'... sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular: ...  
b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.'

88. The appellant contends that the current deliverable supply of homes is 1,323 dwellings, equivalent to HLS of 2.4 years, while the Council argues that the deliverable supply of homes is 2,544 homes, equivalent to an HLS of 4.66 years<sup>32</sup>.
89. That difference being attributable to the appellant having deducted 1,221 dwellings from the deliverable supply identified by the Council. That deduction being made up of: 761 dwellings associated with large sites without development plan allocations and not benefiting from a planning permission (inclusive of some with resolutions to approve); 100 dwellings on the brownfield register, but with no submitted application; 70 dwellings concerning allocated sites but only with a resolution for approval; 50 dwellings concerning allocated sites without a planning permission; and 240 dwellings forming part of the Welborne allocation that would not be delivered in the five year period because planning permission for that development has not been issued.
90. The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.
91. The development would therefore be capable of making a meaningful contribution to the reduction of the current housing shortfall, with 215 dwellings anticipated to be delivered in the five year period between January 2022 and the end of March 2024<sup>33</sup>.

#### *Heritage effects*

92. The development would be situated within the extended settings for: Portchester Castle, a Grade I listed building and scheduled monument; Fort Nelson, a Grade II\* listed building and scheduled monument; and the Nelson Monument, a Grade II\* listed building. The Castle is situated to the south of the site towards the northern extremity of Portsmouth Harbour. Fort Nelson and the Nelson Monument lie to the north of the site, off Portsdown Hill Road.
93. The designated heritage assets are of significance because of their importance to the military history of the local area. However, I consider the effect of the development on the significance of the heritage assets would be less than

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<sup>32</sup> Having regard to the figures quoted in paragraphs 1.18 and 1.19 in the Housing Land Supply SoCG (CD14)

<sup>33</sup> Table 1 in Mrs Mulliner's PoE

substantial, having regard to the policies stated in section 16 (Conserving and enhancing the historic environment) of the Framework. That is because the development would be read within the context of Portchester's extensive established built up area. Nevertheless, paragraph 193 of the Framework advises '... great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'. The less than substantial harm I have referred to therefore attracts great weight.

### *Planning Obligations*

94. The S106 would secure the provision of 40% affordable housing within the development to accord with the provisions of Policy CS18 of the Core Strategy. To mitigate the development's off-site effects on the operation of the local highway network and demands on local transport infrastructure the S106 includes various obligations that would require contributions to be paid to fund appropriate works. There are also obligations relating to the, the provision of and the payment of maintenance contributions for public open and play space and the payment of a contribution for school facilities in the area. To minimise dependency on private motor vehicle usage amongst occupiers of the development the S106 includes planning obligations that would require the undertaking of improvements to the Cams bridge and implementation of a travel plan.
95. Those planning obligations would address development plan policy requirements and I consider that they would be: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. While the planning obligations are necessary, of themselves there is nothing particularly exceptional about them.

### **Planning Balance and Conclusion**

96. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
97. For the reasons given above I have found that the development with the implementation of the option 2 alteration to the Downend Road railway bridge would make inadequate provision for pedestrian access via Downend Road. I have also found that while the implementation of the option 3 alteration to the Downend Road railway bridge would make adequate provision for pedestrian users of Downend Road, the development would unacceptably affect the operation of this road because of the vehicle queuing and driver delay that would arise. I consider those unacceptable effects of the development give rise to conflict with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP and paragraphs 109 and 110c). I consider that the elements of Policies CS5 and DSP40 that the development would be in conflict with are consistent with the national policy and are the most important development plan policies for the purposes of the determination of this appeal. I therefore consider that great weight should be attached to the conflict with the development plan that I have identified.

98. I have found that the accessibility to local services and facilities by modes of transportation other than private motor vehicles would not be unreasonable. That is something that weighs for the social benefits of the development. The development would be capable of being implemented in a manner that would safeguard the integrity of the off-site designated habitats and in that regard the development would have a neutral effect on the natural environment. In relation to these main issues there would be compliance with some of the development plan's policies. Nevertheless, the conflicts with the development plan that I have identified are of sufficient importance that the development should be regarded as being in conflict with the development plan as a whole.
99. There would be significant social and economic benefits arising from the construction and occupation of up to 350 dwellings, including the short term boost to the supply of market and affordable homes in the Council's area. There would be some harm to the setting of the nationally designated heritage assets in the area, however, I have found that harm would be less than substantial and I consider that harm would be outweighed by the previously mentioned social and economic benefits arising from the development.
100. I am of the view that the unacceptable harm to pedestrian safety and the operation of the public highway that I have identified could not be addressed through the imposition of reasonable planning conditions. I have assessed all of the other material considerations in this case, including the benefits identified by the Appellant, but in the overall planning balance I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
101. I therefore conclude that the appeal should be dismissed.

*Grahame Gould*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

John Litton	Of Queens Counsel instructed by Terence O'Rourke Limited
Tim Wall BA MSc MCIHT CMILT	Associate Partner of i-Transport LLP
Jacqueline Mulliner BA (Hons) BTP (Dist) MRTPI	Director and Head of national planning with Terence O'Rourke Limited

### FOR FAREHAM BOROUGH COUNCIL:

David Lintott	Of Counsel instructed by the Council's legal officer
Vera Lamont BEng MICE FCIHT MCMi	Director with Mayer Brown
Andrew Burgess BA (Hons) MRTPI FRSA	Senior consultant with Adams and Hendry Consulting Limited
Richard Wright	Principal Planner (Development Management)

### INTERESTED PARTIES:

Councillor Nick Walker	Fareham Borough Council
Councillor Roger Price	Fareham Borough Council
Councillor Shaun Cunningham	Fareham Borough Council
John McClimont	Chairman Fareham Society
Brian Eastop	Local Resident
Anne Brierly	Local Resident

## **INQUIRY DOCUMENTS (IDs) SUBMITTED AT OR AFTER THE INQUIRY**

ID1	Mr Lintott's opening submissions on behalf of Fareham Borough Council
ID2	Mr Litton's opening submissions on behalf of the appellant, with appendices
ID3	Statement of Councillor Walker and Councillor Sue Bell
ID4	Statement of Mr McClimont, Chairman of the Fareham Society

- ID5 Article by John Fruin 'Designing for pedestrians: a level-of-service concept'
- ID6 Junction visibility extract from Design Manual for Road and Bridges CD123 Revision 0 (August 2019)
- ID7 i-Transport drawings ITB12212-TR: 001A; 002A; 003A; 006A; and 007A and ITB12212-GA-104A annotated by Mayer Brown
- ID8 Mayer Brown additional statement of facts
- ID9 Vectos Model re-run by Mayer Brown output data and screen shots
- ID10 Queue Assessment Information (including data sheets) from i-Transport, response to rerun of Vectos Model undertaken by Mayer Brown
- ID11 Annotated services/facilities context maps of the footways at bridges/tunnels examples included in Appendix V of Mr Wall's Proof of Evidence
- ID12 Vectos comments on the Downend Road Railway Bridge Paramics Modelling undertaken by Mayer Brown in September 2019 further to the review comments being made by Systra
- ID13 Councillor's Cunningham's speaking note
- ID14 Mayer Brown Video file for the operation of Downend Road Bridge
- ID15 i-Transport Video file for the operation of Downend Road Bridge
- ID16 Mrs Mulliner's speaking note on housing land supply
- ID17 Copies of development plan policies CS4, DSP13, DSP15
- ID18 Final version of list of suggested planning
- ID19 Certificated copy of the executed Section 106 agreement
- ID20 Final version of the Inquiry Position Statement
- ID21 Mr Lintott's written closing submissions on behalf of Fareham Borough Council
- ID22 Mr Litton's written closing submissions on behalf of the appellant



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## Appeal Decisions

Inquiry Held on 9-12, 16-19 and 23-25 February 2021

Accompanied site visit made on 13 April 2021

**by I Jenkins BSc CEng MICE MCIWEM**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 8<sup>th</sup> June 2021**

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### **Appeal A Ref: APP/A1720/W/20/3252180**

#### **Land at Newgate Lane (North), Fareham,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Fareham Land LP against Fareham Borough Council.
  - The application Ref. P/18/118/OA, is dated 19 September 2018.
  - The development proposed is demolition of existing buildings and development of up to 75 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure.
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### **Appeal B Ref: APP/A1720/W/20/3252185**

#### **Land at Newgate Lane (South), Fareham,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Bargate Homes Ltd. against Fareham Borough Council.
  - The application Ref. P/19/0460/OA, is dated 26 April 2019.
  - The development proposed is demolition of existing buildings and development of up to 115 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure.
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## **Decisions**

1. Appeal A is dismissed and the outline planning permission sought is refused.
2. Appeal B is dismissed and the outline planning permission sought is refused.

## **Procedural matters**

3. In each case, the planning application subject of appeal is in outline, with all detailed matters except access reserved for future consideration. While the application subject of appeal B was with the Council for determination, the scheme was revised with the agreement of the Council by limiting the unit numbers to 'up to 115 dwellings', rather than 'up to 125 dwellings' as identified on the planning application form. The change was supported by amended plans. I have considered the appeal on the basis of the revised scheme and reflected the details in the summary information above.
4. Following the submission of the appeals, the Council's Planning Committee determined on the 24 June 2020 that, were it still in a position to do so,

it would have refused to grant planning permission in both cases. In support of its view, the Council cited 15 reasons for refusal in each case (a)-o)).

The reasons for refusal were the same with the exception of: appeal A reason e), which relates to the loss of best and most versatile agricultural land; and, appeal B reason i) related to the protection and enhancement of Chamomile. Prior to the Inquiry, the Council confirmed that, in each case, 3 of the other reasons for refusal had been satisfactorily addressed: appeal A reasons f), g) and i); and, appeal B reasons e), f) and h).

5. Each of the schemes is supported by a formally completed unilateral undertaking (UU): appeal site A-UUA; and, appeal site B-UUB, which seek to secure a number of financial contributions, Affordable Housing and sustainable travel measures. In addition, the appellants have provided a unilateral undertaking related to off-site mitigation for the loss of a low use Solent Wader and Brent Goose site (UUC). I have taken those UUs into account.
6. Reasons for refusal j) and k) relate to the absence of appropriate measures to mitigate likely adverse effects on the integrity of European Protected Sites. The appellants and the Council are content that those matters have now been satisfactorily addressed by mitigation measures secured by the unilateral undertakings. Nonetheless, there is no dispute that if I were minded to allow the appeals, I would need to re-consult Natural England and undertake an Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017*.
7. Reasons for refusal k)-o) relate to the absence of legal agreements to secure other necessary mitigation measures. However, the Council now considers that those reasons have been satisfactorily addressed by the submitted UUs or could be addressed through the imposition of suitable conditions.
8. Insofar as appeal A reason for refusal h) and appeal B reason for refusal g) relate to the capacity of the Newgate Lane East junction with Newgate Lane, the Council withdrew<sup>1</sup> that aspect of its case before the appellants presented their evidence on the matter<sup>2</sup>. Therefore, I have not considered it further.

### **Main Issues**

9. I consider that the main issues in these cases are: the effect of the proposals on the character and appearance of the area; the effect on highway safety; whether, with reference to accessibility, the schemes would be sustainably located; the effect on the spatial development strategy for the area; and, the effect on housing land supply.

### **Reasons**

10. Appeal site A comprises 3.95 hectares of agricultural land, which is bounded by a small area of agricultural land to the north, Newgate Lane to the west and Newgate Lane East to the east. The site shares a small proportion of its southern boundary with Hambrook Lodge and the remainder is shared with appeal site B. The appeal A proposal would involve the development of up to 75 dwellings within the site as well as other associated works. Appeal site B comprises 6.1 hectares of agricultural land, which is bounded by Woodcote Lane to the south, Newgate Lane to the west and Newgate Lane East to the

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<sup>1</sup> Including the evidence given by Mr Whitehead.

<sup>2</sup> Inquiry document no. 23.

east. Part way along its length, the northern boundary of the site wraps around the western, southern, and eastern boundaries of the grounds of Hambrook Lodge. Otherwise appeal site B shares its northern boundary with appeal site A. The appeal B proposal would involve the development of up to 115 dwellings within the site as well as other associated works.

11. Vehicular, cycle and pedestrian access to each site would be provided by an access road leading from Newgate Lane. A pedestrian/cycle route is also proposed from appeal site A through appeal site B to Woodcote Lane, leading to the proposed Toucan crossing of Newgate Lane East and Bridgemary. The proposed Toucan crossing would be funded through the provision of a contribution secured by UUB. The *Statement of Common Ground-Linked Delivery* (SoCGLD) has been agreed between the appellants and the Council. It indicates that it would be possible to ensure that the appeal A scheme cannot come forward independently of the appeal B scheme through the imposition of a Grampian condition, thereby ensuring the provision of those proposed access links.
12. The appeal sites form part of an area of countryside situated between the urban settlement boundary of Stubbington, to the west, Gosport, to the east and Fareham, to the north. The settlement referred to as Peel Common in the evidence of the main parties is limited to the residential and commercial properties located off Newgate Lane, Woodcote Lane and Albert Road, within the administrative area of Fareham Borough Council (the Council). Under the terms of the Development Plan, Peel Common does not have a defined settlement boundary and it is also situated in the area of countryside that includes the appeal sites. Furthermore, it does not include the 'Peel Common' housing estate located further to the east within Gosport Borough Council's administrative area. The closest urban boundary to the appeal sites is to the east and is associated with a number of areas within Gosport, such as Bridgemary, Woodcot and the 'Peel Common' housing estate. For simplicity, those areas have been jointly referred to in the evidence of the main parties as Bridgemary. I have taken the same approach in these decisions.
13. Policy CS14 of the *Fareham Local Development Framework Core Strategy, 2011* (LP1) indicates that built development on land outside the defined settlements will be strictly controlled to protect the countryside from development which would adversely affect its landscape character, appearance and function. Policy DSP6 of *the Local Plan Part 2: Development Sites and Policies, 2015* (LP2) indicates that there will be a presumption against new residential development outside the defined urban settlement boundaries (as identified on the Policies Map) and that proposals should not result in detrimental impact on the character or landscape of the surrounding area.
14. The area of countryside situated between the settlement boundary of Stubbington, to the west, Gosport, to the east and Fareham, to the north also forms part of the Stubbington/Lee-on-the-Solent and Fareham/Gosport Strategic Gap (Fareham-Stubbington Gap), shown on the LP2 Policies Map Booklet. LP1 Policy CS22 indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
15. However, the Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites.

The reasoned justification for LP2 Policy DSP40 indicates that the Council is committed to delivering the housing targets in the Core Strategy, and so it is important to provide a contingency position in the Plan to deal with unforeseen problems with delivery. To that end, Policy DSP40 indicates that where it can be demonstrated that the Council does not have a five-year supply of land for housing, additional sites, outside the urban area boundary, within the countryside and Strategic Gaps, may be permitted where they meet a number of criteria (the DSP40 contingency). Those criteria are not as restrictive as the requirements of LP1 Policies CS14 and CS22 or LP2 Policy DSP6. To my mind, it follows that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies would be reduced and would be outweighed by compliance with LP2 Policy DSP40.

### ***Character and appearance of the area***

16. Criterion (ii) of LP2 Policy DSP40 requires that the proposal is well related to the existing urban settlement boundaries and can be well integrated with the neighbouring settlement. To ensure that this is the case, the reasoned justification for the Policy indicates that sensitive design will be necessary. The Council and the appellants agree that the existing urban settlement boundary of Bridgemary is relevant in this context. Criterion (iii) of Policy DSP40 requires that the proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the countryside and, if relevant, the Strategic Gaps. In this context the main parties agree that both Bridgemary and Peel Common are relevant neighbouring settlements. The reasoned justification for LP1 Policy CS22, which deals with development in Strategic Gaps, indicates that they do not have intrinsic landscape value but are important in maintaining the settlement pattern. I consider therefore, that the Strategic Gap designation is of little relevance to this particular main issue. I deal with the effect on the Fareham-Stubbington Gap later in this decision.
17. Peel Common would be the closest settlement to both appeal sites. The pattern of built development there is characterised, for the most part, by ribbon development that fronts onto the western side of Newgate Lane, with small spurs eastwards along the southern side of Woodcote Lane and westwards along Albert Road. Along Newgate Lane the ribbon of development only extends northwards to a point just beyond the alignment of the southern boundary of appeal site A on the opposite side of the highway. I consider that the only notable development to the west of appeal site A, on the western side of Newgate Lane, comprises: Peel Common Wastewater Treatment Works, which is set well back from the highway and is screened from view by landscaping; and, Newlands' Solar Farm, which is relatively low profile. Peel Common is described by the *Fareham Landscape Assessment, 2017* (FLA) as an isolated small settlement and, in my view, given its scale, pattern of development and location in the countryside, that is a reasonable assessment.
18. Both appeal sites are divided into an eastern and western section by the River Alver, which runs in a north-south direction through the sites. To the east of the river the land within the appeal sites is predominantly arable and to the west grassland. The latest Illustrative Masterplans submitted in support of the schemes indicate that, in both cases, the proposed dwellings would be clustered on the eastern side of the River Alver and the land to the west would comprise public open space. To my mind, the absence of residential

development from the western sections of the sites would be necessary, due to the environmental constraints associated with the land to the west of the river, and it could be secured by condition. The constraints include areas at high risk of surface water flooding and of particular ecological value.

19. As a result, and in stark contrast to the existing settlement pattern of Peel Common, none of the proposed residential properties would front onto Newgate Lane or be directly accessed from either Newgate Lane or Woodcote Lane. Links between appeal site B and Woodcote Lane would be limited to a pedestrian/cycleway connection. In each case, the main access to the proposed residential areas would comprise a single access road between Newgate Lane and the eastern section of each site. The sections of these roads through the proposed public open space, in the western sections of the sites, would be devoid of roadside development for the reasons set out above, which would further weaken the relationship between the proposed residential areas and the existing settlement. I understand that in terms of dwelling numbers, the appeal B scheme would be larger than the size of the existing settlement of Peel Common and the appeal schemes together would be approximately double its size. I consider that, with particular reference to their size and location, the proposals have not been sensitively designed to reflect the character of the neighbouring settlement of Peel Common, contrary to the aims of LP2 policy DSP40(iii). Furthermore, in my judgement, due to the site constraints, these are not matters that could be satisfactorily mitigated through design at the reserved matters stage.
20. The area of Bridgemarky, which is situated to the east of the appeal sites, is primarily residential in character, with a variety of building styles generally of 1 to 2-storeys in height. A network of roads and footways provides for ease of movement within that residential area and closely integrates it with the much larger urban area of Gosport. The appeal proposals would also be residential in character and proposed buildings of a similar scale could be secured by condition. However, the appeal sites would be set well apart from that existing urban area, beyond agricultural fields and a recreation ground. The most direct access route between them would be along Woodcote Lane, across Newgate Lane East and along Brookes Lane; a route unsuitable for cars. In my judgement, the appeal schemes, whether considered on their own or together would comprise and would be perceived as islands of development in the countryside set apart from the existing urban settlements. They would not amount to logical extensions to the existing urban areas. I consider that, with particular reference to their isolated location, the proposals have not been sensitively designed to reflect the character of the neighbouring settlement of Bridgemarky. Furthermore, they would not be well related to the existing urban settlement boundary of Bridgemarky or well-integrated with it. In these respects, the proposals would conflict with LP2 Policy DSP40(ii) and (iii). In my judgement, due to the location of the sites, these are not matters that could be satisfactorily mitigated through design at the reserved matters stage.
21. In relation to the requirement of Policy DSP40(iii) that any adverse impact on the countryside be minimised, the Council argues that 'minimise' should be interpreted as requiring any adverse impact to be small or insignificant. I do not agree. The aim of the Policy is to facilitate development in the countryside relative in scale to the demonstrated five-year housing land supply shortfall. To my mind, any new housing development in the countryside would be likely to register some adverse landscape and visual effect, and

development of a scale to address a substantial shortfall would be unlikely to register a small or insignificant impact. The Council's approach would make the Policy self-defeating. Given the aim of the Policy with respect to housing land supply, I consider that it would be reasonable to take 'minimise' to mean limiting any adverse impact, having regard to factors such as careful location, scale, disposition and landscape treatment.

22. The Framework places particular emphasis on the protection and enhancement of valued landscapes (in a manner commensurate with their statutory status or identified quality in the Development Plan). It seeks to give the greatest level of protection to the landscape and scenic beauty of designated areas, such as National Parks and Areas of Outstanding National Beauty (AONB). The appeal sites are not the subject of any statutory or non-statutory landscape designations. Nonetheless, *Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA)* by the Landscape Institute and Institute of Environmental Management & Assessment indicates that the absence of a designation does not mean that an area of landscape is without any value and points to landscape character assessments as a means of identifying which aspects of a landscape are particularly valued. Furthermore, insofar as it seeks to minimise any adverse impact on the countryside, I consider that LP2 Policy DSP40 is consistent with the Framework, which seeks to ensure that decisions contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
23. As the planning applications the subject of these appeals are in outline, a full assessment of the landscape and visual impacts of the proposed schemes cannot be carried out at this stage. Nonetheless, the illustrative layout plans indicate that, in each case, the proposed dwellings would be set back from the perimeter of the site beyond relatively narrow areas of landscaping. To my mind, the scope for landscaping would be unlikely to be significantly greater, given the number of dwellings proposed and that it would not be reasonable to seek to use a condition to modify the developments to make them substantially smaller in terms of unit numbers than that which was applied for. In my view, that would amount to a change upon which interested parties could reasonably expect to be consulted and would require a new application. Whilst the Design and Access Statements indicate that the proposed buildings may be up to 3-storeys in height, the appellants have indicated that they could be limited to 1-2 storeys, in keeping with the surroundings, through the imposition of conditions and without reducing the numbers of units proposed.

#### *Landscape impact*

24. GLVIA indicates that the assessment of landscape effects involves assessing the effects on the landscape as a resource in its own right. This is not just about physical elements and features that make up the landscape; it also embraces the aesthetic<sup>3</sup>, perceptual and experiential aspects of the landscape that make different places distinctive/valued.
25. Natural England's *National Character Assessment* places the appeal sites within the South Coast Plain National Character Area, the characteristics of which include that the plain slopes gently southwards towards the coast and there are

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<sup>3</sup> CD138 page 84 Box 5.1 'scenic quality...landscapes that appeal primarily to the visual senses', perceptual aspects...perceptual qualities, notably wilderness and/or tranquillity', 'experiential 'evidence that the landscape is valued for recreational activity where experience of the landscape is important'.

stretches of farmland between developed areas. At a county level, the sites form part of the Gosport and Fareham Coastal Plain Landscape Character Area, as identified by the *Hampshire Integrated Character Assessment 2012* (HICA), and within that area part of the Coastal Plain Open Landscape Type.

Its characteristics include, amongst other things, extensive and flat or gently sloping plain, often associated with arable land uses and some of the most densely developed areas in Hampshire have occurred in this landscape.

The HICA informed the *Fareham Landscape Assessment, 2017* (FLA), which was commissioned by the Council to inform emerging Local Plan policy.

26. The FLA identifies the area within which the appeal sites are situated as Landscape Character Area 8 (LCA 8), Woodcot-Alver Valley. LCA 8 forms part of the easternmost extent of the Fareham-Stubbington Gap and is divided into 5 Local Landscape Character Areas (LLCAs). More specifically appeal site A and the majority of appeal site B, with the exception of the strip of land to the west of the River Alver, fall within LLCA 8.1a. This area is generally bounded by Newgate lane to the west, Woodcote Lane to the south, the western edge of Bridgemary to the east and Speedfields Park Playing Fields to the north. Outside of this LLCA, to the west and south are the main residential sections of the Peel Common settlement, which fall within LLCA 8.2: *Peel Common and Alver Valley*, as does the western section of the appeal B site. Newlands' Solar Farm and Peel Common Wastewater Treatment Works, which are sited to the west of the appeal sites, fall within LLCA 7.1: *Fareham-Stubbington Gap*.
27. The FLA comments both on the character of LLCA 8.1a prior to the completion of Newgate Lane East and on the likely implications of that highways scheme.
28. Prior to the completion of Newgate Lane East, the FLA recognises that LLCA 8.1a is not covered by any current national or local landscape designation, its scenic quality is not exceptional and it is affected by some localised intrusion of urban features around its periphery. It indicates that LLCA 8.1a shares the typically flat, low-lying character of the coastal plain landscape and whilst it lacks the very open, expansive character of other parts of the coastal plain (including adjacent land within the Strategic Gap to the west), it nevertheless has a relatively open and large-scale character. More specifically, it is generally devoid of built development (apart from buildings at Peel Farm<sup>4</sup>), retains a predominantly open, rural, agricultural character, and tree belts along its boundaries to the north, east and south give the area a sense of enclosure from surrounding urban areas and contribute to its aesthetic appeal. The FLA indicates that overall, the landscape value of LLCA 8.1a is moderate to high. Furthermore, the FLA identifies that the landscape resource has a high susceptibility to change, as it has very limited capacity to accommodate development without a significant impact on the integrity of the area's rural, agricultural character. Whilst these judgements are not disputed, the Council and appellants disagree over the impact that the construction of Newgate Lane East has had.
29. Regarding Newgate Lane East, the FLA anticipated that as the road corridor would be relatively narrow, unaffected land within the rest of the area should be of sufficient scale to maintain its essentially rural character. In my view, this is the case notwithstanding that the roadside planting, which has the potential to reduce the visibility of the highway and associated fencing, has yet to

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<sup>4</sup> Around Hambrook Lodge.

mature. Furthermore, given the relatively low profile of the road scheme, the openness of the area is largely unaffected. Under these circumstances, I consider that whilst the landscape value of LLCA 8.1a has been reduced by the road scheme to medium, the susceptibility of the landscape to change remains high, rather than low/medium identified by the *Landscape and Visual Impact Assessments* submitted in support of the applications (LVIAs). Support for this judgement is provided by the FLA, which indicates that significant further development in addition to the road scheme would almost certainly have an overwhelming urbanising effect, potentially tipping the balance towards a predominantly urban character. Overall, I regard the sensitivity of the landscape resource within LLCA 8.1a to be medium/high, consistent with the Council's Landscape and Visual Assessment findings, and contrary to the low/medium findings set out in the LVIAs.

30. In both cases, the proposals would replace a significant proportion of the agricultural land within LLCA 8.1a with residential development. Whether single-storey or taller buildings are proposed, the massing of each development would add to the sense of enclosure of this LLCA, greatly diminishing its open character and the duration of the impact would be long term. Considering each scheme on its own, the size and scale of the change, taken together with the existing limited intrusion from surrounding urban influences and the effect of Newgate Lane East, would be sufficient in my judgement to tip the balance towards a predominantly urban character. I acknowledge that the impact would not extend beyond LLCA 8.1 to affect a wider area of landscape. Nonetheless, I judge the magnitude of change as medium and the significance would be moderate to moderate/major adverse, even after mitigation. In my view, the effect would not be as low as the minor/moderate or minor adverse significance of effect identified by the LVIAs, which the appellants suggest would be considered acceptable and would not constitute an overall 'harm' to the landscape.
31. As I have indicated, the only section of the appeal sites that falls within LLCA 8.2 is the western section of appeal site B, the development of which would be constrained by its ecological value. Therefore, I give little weight to the view set out in the FLA regarding LLCA 8.2 that there may be potential for some modest, small scale development associated with the existing built form at Peel Common.
32. I consider overall that the proposals would each cause significant harm to the landscape of the area.

#### *Visual impact*

33. There is no dispute that the area from which the proposed developments would potentially be visible, the visual envelope, would be limited. This is due to a combination of the flat topography of the surroundings and the effects of vertical elements such as neighbouring settlement edges and some tall vegetation. As a result, the visual receptors identified by the Council and the appellants are relatively close to the appeal sites and the associated assessments of visual effects provided by those parties are broadly comparable, finding a number of adverse impacts of moderate or greater significance.
34. As regards the users of Newgate Lane, I consider them to be of medium sensitivity to change, consistent with the position set out in the LVIAs and by

- the Council. However, the proposed development would significantly alter views eastwards. Currently long views can be enjoyed from some vantage points across relatively open countryside, Newgate Lane East being low profile infrastructure, towards the tree lined edge of Bridgemary and the 'big skies' noted by the *Technical Review of Areas of Special Landscape Quality and Strategic Gaps* (2020)(TR). As a result of either appeal scheme on its own, residential development would become a prominent feature in the foreground of such views, notwithstanding the proposed setback beyond an area of open space between the highway and the proposed dwellings. From some vantage points, the long rural view would be interrupted entirely, being replaced by a short suburban view of one of the appeal schemes, which would be likely to break the existing skyline and greatly reduce the sense of space. I regard the magnitude of impact as high and the significance of impact as major/moderate adverse, in common with the Council.
35. The LVIA's did not consider vantage points along Newgate Lane East, which was under construction when the assessments were undertaken. I consider users of Newgate Lane East to be of medium sensitivity to change, in common with users of Newgate Lane. It is anticipated that the proposed buildings would be set back from Newgate Lane East beyond a strip of landscaping, within the sites and along the edge of the highway. Nonetheless, given the likely scale and disposition of the built development, I consider it likely that it would still be visible to some extent from that neighbouring road. In my judgement, when travelling between the built-up areas to the north and south, the respite provided by the surrounding countryside along Newgate Lane East is of notable value. That value would be greatly diminished as a result of either scheme. Both would foreshorten views to the west and tip the balance from a predominantly rural to suburban experience. The magnitude of impact on that receptor would be medium and the significance of impact moderate adverse.
36. Overall, I consider that the significance of the visual impact would be moderate to moderate/major adverse. It would have a significant adverse effect on the appearance of the area.
37. The FLA sets development criteria to be met in order to protect the character and quality of landscape resources, views, visual amenity, urban setting and green infrastructure. Whilst the aim of LP2 Policy DSP40 is to minimise, rather than avoid, any adverse impact, I consider that they are of some assistance when judging the extent to which there would be an impact and whether it can be regarded as being minimised. I acknowledge, that in the context of making some provision for housing land supply in the countryside, it would be unrealistic to expect the open, predominantly agricultural and undeveloped rural character of area LLCA 8.1a to be entirely protected as the FLA suggests. However, the proposals would cause significant harm in that regard. Furthermore, rather than situating the proposed developments to the east of Newgate Lane East, next to existing urban areas, the schemes would amount to the creation of substantial new pockets of urbanising built development within existing open agricultural land.
38. I conclude that, in each case, the proposal would cause significant harm to the character and appearance of the area, having had regard to the location, disposition, likely scale and landscape treatment, each would fail to minimise the adverse impact on the countryside. The proposals would conflict with LP2 Policy DSP40(ii) and (iii).

### **Highway safety**

39. The *Statement of Common Ground on Transport (SoCGT)*, agreed between the Council and the appellants, states it is agreed that the individual and cumulative impacts of the northern and southern sites would have a detrimental impact on the operation of the existing right turn lane priority junction between Newgate Lane and Newgate Lane East. Furthermore, this cannot be mitigated by priority junction improvements and so a signalised junction is proposed.
40. The proposed signalised junction would introduce a flare from 1 to 2-lanes on the northbound Newgate Lane East approach to the junction and a merge back to 1 lane some distance after the junction. Furthermore, the SoCGT indicates, in relation to southbound vehicles seeking to access Newgate Lane from Newgate Lane East across 2 lanes of on-coming traffic, the proposed signal method of control would be the provision of an indicative arrow right turn stage. Under the proposed signalling arrangement, right turn movements from Newgate Lane East into Newgate Lane could occur at three points in the cycle of the signals: firstly, turning in gaps in the free flowing northbound traffic; secondly, during the intergreen period when the northbound flow is stopped and before the Newgate Lane traffic is released; and, then if right turners are still waiting after the cycle, the indicative arrow would be triggered to allow them to turn unopposed. The SoCGT confirms that the appellants are proposing an indicative arrow arrangement rather than the provision of a fully signalised right turn stage, as the latter would operate unacceptably in terms of capacity.
41. The appellants' *Stage 1 Road Safety Audit (RSA)* identifies a potential problem with the proposed right turn lane arrangement, with reference to CD 123 of the *Design Manual for Roads and Bridges (DMRB)*. In the context of right turning traffic movements at signal-controlled junctions, CD 123 indicates that where the 85<sup>th</sup> percentile approach speed is greater than 45 mph, there is an increased risk of accidents between right-turning vehicles seeking gaps and oncoming vehicles travelling at speed. It confirms that where the 85<sup>th</sup> percentile approach speed is greater than 45 mph, right hand turns should be separately signalised. Against that background, the RSA raises the concern that higher northbound vehicle speeds (particularly in off-peak traffic conditions) may mean that gap acceptance by the drivers of right turning vehicles could lead to right-turn collisions or to sudden breaking and shunt type collisions. It recommends that, at detailed design stage, signal staging/phasing should incorporate a separately signalled right-turn into Newgate Lane and that it would be appropriate to measure northbound vehicle speeds to design signal staging and phasing arrangements accordingly.
42. DMRB CA 185 sets out the approach to vehicle speed measurement on trunk roads where existing vehicle speeds are necessary to set the basis for the design of signal-controlled junctions. CA 185 confirms that 85<sup>th</sup> percentile vehicle speeds shall be calculated where designs are to be based on measured vehicle speeds. It is common ground that, whilst this standard is intended for use in relation to trunk roads, in the absence of any other reference, it can be used to guide the measurement of vehicle speeds on other roads, such as Newgate Lane East.
43. The SoCGT identifies 3 speed surveys whose results are relevant to the consideration of northbound speeds on Newgate Lane East. They were

undertaken in: September/October 2018; February/March 2020; and November 2020. All three surveys include measurements undertaken at weekends, contrary to the CA 185 protocol which indicates that speed measurements shall not be undertaken at weekends. Nevertheless, they were not limited to weekend measurements. Each survey included measurements on other days of the week, and I have not been provided with any evidence to show that the 85<sup>th</sup> percentile speeds derived from the surveys are not reasonably representative of the weekdays surveyed. However, the last survey was carried out during a period affected by movement restrictions associated with the coronavirus pandemic and the recorded average flow rates are noticeably lower than those recorded at the same times of day in the other two surveys. I consider that, under these circumstances, greater weight is attributable to the results of the earlier two surveys.

44. CA 185 indicates that a minimum number of 200 vehicles speeds shall be recorded in the individual speed measurement period and speed measurements should be taken outside of peak traffic flow periods. The peak hours identified by the *Transport Assessments* submitted in support of the appeal planning applications are 08:00-09:00 hrs (AM peak) and 17:00-18:00 hrs (PM peak). Whilst CA 185 indicates that non-peak periods are typically between 10:00-12:00 hrs and 14:00-16:00 hrs, I share the view of the Highway Authority (HA) that this does not rule out consideration of other non-peak periods, so long as a minimum number of 200 vehicles speeds are recorded in the individual speed measurement period as required by CA 185. Having regard to the results of the September/October 2018 and February/March 2020 surveys for northbound traffic on Newgate Lane East, in addition to the typical periods identified above, the period from 05:00-06:00 hrs meets these criteria, falling outside of the peak hours and having a recorded average flow greater than 200 vehicles.
45. The September/October 2018 and February/March 2020 survey results record 85<sup>th</sup> percentile speeds in the periods 10:00-12:00 hrs and 14:00-16:00 hrs in the range 41 mph-44.8 mph when a wet weather correction is applied. The upper end of this range being only marginally below 45 mph. In the period 05:00-06:00 hrs the results exceeded 45 mph. CA 185 indicates that where there is a difference in the 85<sup>th</sup> percentile speeds derived from the individual speed measurement periods, the higher value shall be used in the subsequent design.
46. I give little weight to the view of the appellants that the introduction of traffic signals, as proposed, would be likely to result in drivers being more cautious and so reduce their vehicle speeds. Even if that were the case, it is not clear that it would reduce 85<sup>th</sup> percentile speeds in the period 05:00-06:00 hrs to below 45 mph or that this undefined factor should be taken into account in the design. The appellants have suggested that in the absence of any demand over-night, the signals would revert to an all red stage, which would further slow the speeds of vehicles. However, it appears that there would be likely to be demand in the period 05:00-06:00 hrs. Furthermore, the HA has confirmed, for a number of reasons, that is not the way multi-arm junctions are set up on its network. Firstly, for junction efficiency, the signals would be expected to rest on green on Newgate Lane East, allowing traffic to proceed unimpeded on the main arm. Secondly, this approach reduces the likelihood of drivers, who wrongly anticipate that the lights will turn from red to green on their approach,

- proceeding without slowing and colliding with others. In light of the HA's established approach, I give little weight to the appellants' suggestion.
47. I consider that the proposals, which would not include separate signalisation of the right-hand turn, would conflict with CD 123.
48. The operation of the existing priority junction involves some drivers turning right from Newgate Lane East into Newgate Lane across a single northbound lane and there is no dispute that at present the junction operates safely. However, the proposed junction arrangement would give rise to the possibility of right turning vehicles gap-seeking across 2 opposing lanes, a practice which the HA considers would be unsafe. I note that Rule 180 of the *Highway Code* indicates that right turning drivers should wait for a safe gap in oncoming traffic. However, the basis of the HA's concern is that a right turning driver may not be able to see an oncoming nearside northbound vehicle, due to screening by offside northbound vehicles, until it is too late to avoid a conflict. The Rule 180 illustration is of a single opposing lane and it does not grapple with the potential for unsighted vehicles in a two opposing lanes scenario. In support of its concern, the HA has identified other junctions where the frequency of accidents involving right turning vehicles has been reduced by moving from a situation where gap-seeking across 2 lanes is allowed to a fully signalised right turn phase.
49. With respect to the modified junctions drawn to my attention by the HA, I agree with the appellants that, in the absence of data with respect to traffic flows, speeds and percentage of right turners at those other junctions, it cannot be determined that they are directly comparable to the appeal junction in those respects. However, nor can it be determined that they are not. Nonetheless, the improved accident record at those other junctions following the introduction of a fully signalised right turn phase appears to me to support, for the most part, the HA assessment that the practice of gap-seeking across 2 lanes was previously a contributory factor to the incidence of accidents<sup>5</sup>. In relation to this matter, I give greater weight to the assessment of the HA, as it is likely to be more familiar with the historic operation of its network, than that of the appellants' highway witnesses.
50. The appellants consider that an arrangement which allows vehicles turning right across two opposing lanes by gap-seeking is common. In support of that view, they have identified 2 junctions in the area where the HA has not prevented right turning vehicles from crossing 2 lanes without signalling: A27/Ranvilles Lane; and, A27/Sandringham Road. However, the HA has indicated that there is a history of accidents associated with right turn manoeuvres at the A27/Ranvilles Lane junction, the most recent having occurred in 2020, and the junction will be taken forward on the HA's provisional list for safety remedial measures during 2021/2022. The A27/Sandringham Road junction is located close to the point at which the speed limit reduces from 40 mph to 30 mph on the A27. Furthermore, Sandringham Road is a cul-de-sac serving far fewer dwellings than would be the case at Newgate Lane as a result of either of the appeal A or B schemes, and so the number of daily or peak hour right turning movements associated with it would be likely to be much lower than the appeal junction. To my mind, the circumstances associated with these two junctions do not lend support to the appeal schemes.

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<sup>5</sup> Whether a 3-year or 10-year accident record period is considered.

51. The appellants argue that in circumstances where a vehicle is waiting at the proposed junction for an approaching northbound offside vehicle to pass before turning right onto Newgate Lane, it is likely that a nearside vehicle screened from view by that offside vehicle would also have passed when the waiting vehicle starts to cross the lanes. To my mind, that would not necessarily be the case, as it would depend on the degree to which the pair of northbound vehicles are staggered and their relative speeds. Some screened vehicles may be slowing to turn left into Newgate Lane causing a right turning vehicle to pause in the offside lane when that previously screened nearside vehicle comes into view and that would potentially bring it into conflict with other approaching offside vehicles. Furthermore, it is foreseeable that right turning drivers seeking gaps may be faced with a stream of traffic in both opposing lanes and with some variation in approach speeds. A nearside vehicle moving past an offside stream of traffic may be unsighted until a late stage and may be closing the gap faster than the right turning driver had anticipated, leading to conflicting movements.
52. With reference to the appellants' *Transport Assessment Technical Note-Junction Modelling Results (TATN)*, by the 2024 design year, the cumulative impact of each appeal scheme and other developments would be likely to result in a marked increase in the total number of right turning vehicles into Newgate Lane. Furthermore, the appellants' traffic modelling predicts that in the AM peak there would not be any suitable gaps in free-flowing northbound traffic for right turning vehicles to cross. However, the proposed signalling arrangement would not prevent drivers from gap-seeking and they may still attempt to do so, if they thought that they could get across, rather than waiting for the intergreen period or the indicative arrow. The modelling predicts that in the PM peak almost all of the right turning traffic would cross in gaps in free-flowing northbound traffic.
53. Against this background, I share the concern of the HA that right turning vehicles gap-seeking to cross 2 oncoming lanes at the proposed junction poses a far greater risk of collisions than the existing arrangement and a significant risk to highway safety.
54. I conclude that the proposed junction arrangement, whether one or both of the appeal schemes were to proceed, would have an unacceptable impact on highway safety. Furthermore, in my view, this harm could not be reduced to an acceptable level through the imposition of a condition(s). As I have indicated, the Council and appellants agree that a fully signalised right turn stage would operate unacceptably in terms of capacity. The proposals would conflict with LP2 Policy DSP40(v), which seeks to ensure that development would not have any unacceptable traffic implications, and it would not fit well with the aims of LP1 Policy CS5(3) insofar as it supports development which does not adversely affect the safety of the local road network. These Policies are consistent with the Framework, which indicates that development should only be prevented or refused on highway grounds in limited circumstances, including if there would be an unacceptable impact on highway safety. This weighs very heavily against the schemes.

***Sustainably located, with reference to accessibility***

55. LP1 Policy CS15 indicates that the Council will promote and secure sustainable development by directing development to locations with sustainable transport

- options. LP1 Policy CS5 indicates that development proposals which generate significant demand for travel and/or are of high density, will be located in accessible (includes access to shops, jobs, services and community facilities as well as public transport) areas that are or will be served by good quality public transport, walking and cycling facilities. LP2 Policy DSP40(ii) seeks to ensure that proposals are sustainably located adjacent to the existing urban settlement boundaries.
56. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and identifies that this should be taken into account in decision-making. I acknowledge that the appeal sites are in the countryside. However, they are situated in a relatively narrow countryside gap between urban areas, rather than a larger rural area where opportunities for sustainable transport could reasonably be expected to be limited. In any event, consistent with Development Plan Policies CS15, CS5 and DSP40, the Framework also indicates that significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
57. The appeal sites are not near to, but are set well apart from: the western, urban area boundary of Bridgemary, as defined by the *Gosport Borough Local Plan 2011-2029 Policies Map*, which is to the east of the appeal sites on the far side of an area of agricultural land that adjoins the eastern side of Newgate Lane East; and, further from the southern settlement boundary of Fareham, which is defined by the LP2 Policies Map Booklet and is located some distance further north at the edge of HMS Collingwood and Speedfields Park. Peel Common does not have a defined urban settlement boundary. As such, I consider that the sites are not adjacent to any existing urban settlement boundary, contrary to the requirement of LP2 Policy DSP40(ii).
58. I acknowledge that the Council appears to have taken a flexible approach to the 'adjacency' requirement in a number of other cases. However, in the cases drawn to my attention, with the exception of the site to the south of Funtley Road, development has taken place or been approved between the application site and the nearest existing urban settlement boundary. In the case of the site to the south of Funtley Road, it abuts a highway on the opposite side of which is some of that other development and the site boundary is a relatively short distance across undeveloped land from an existing urban settlement boundary. The circumstances are not directly comparable to those in the cases before me, in relation to which the sites would be set further apart across undeveloped land from the nearest existing urban settlement boundary. In any event, each case must be considered primarily on its own merits and in my view, the Council's approach elsewhere would not justify harmful development of the appeal sites. I give little weight to those decisions of the Council. Furthermore, appeal decision Ref. APP/L3625/X/16/3165616 considered adjacency in the context of the relationship between a highway and gates set back from it by around 1 metre. The circumstances are not comparable to those in the cases before me and are of little assistance.
59. I turn then to consider the accessibility of the sites with reference to modes of transport. The *National Travel Survey, 2019* (NTS), identifies, amongst other things, the average trip length and duration in England by all modes of travel for the trip purposes of: commuting; education; personal business; shopping; sport (participate); and, entertainment/public activity. There are a range of

- employment, education, retail, health, sport, and leisure uses well within those average distances and durations of the appeal sites. This indicates that there are likely to be some opportunities for residents of the proposed developments to travel less when compared to the national average journey distances and durations, and in this context, the locations of the appeal sites limit the need to travel. However, the NTS 'all modes of travel' includes, amongst other modes, car travel and so it does not automatically follow that the proposed developments would be served by good quality public transport, walking or cycling facilities.
60. The *Manual for Streets* indicates that walkable neighbourhoods are typically characterised by having a range of facilities within around 800 metres walking distances of residential areas which residents may access comfortably on foot. However, it indicates that this is not an upper limit and walking offers the greatest potential to replace short car trips, particularly those under 2 kilometres. This is echoed by the Department for Transport *Local Cycling and Walking Infrastructure Plans (2017)*, which indicates that for walking, 'the distances travelled are generally...up to 2 kilometres'.
61. The Institute of Highways and Transportation's (now CIHT) *Guidelines for Providing for Journeys on Foot, (2000)* (PfJoF) gives more detailed guidance, setting out, with reference to some common facilities, suggested desirable, acceptable and preferred maximum walking distances which range up to a preferred maximum of 2 kilometres for some facilities. The approach is consistent with CIHT's more recent *Planning for Walking, April 2015* (PFW), which indicates that most people will only walk if their destination is less than a mile away (equivalent to around 1.6 kilometres) and about 80% of journeys shorter than 1 mile are made wholly on foot, the power of a destination determining how far people will walk to get to it. To illustrate the point it indicates that while for bus stops in residential areas, 400 metres has traditionally been regarded as a cut-off point, people will walk up to 800 metres to get to a railway station, which reflects the greater perceived quality or importance of rail services.
62. Having regard to the Department for Transport's NTS (Table NTS0303-2020 update), there have been no significant changes in the average walking trip length in the period 2002-2019. To my mind, this indicates it is unlikely that attitudes towards walking trip length have altered to any great extent since the publication of PfJoF. This is consistent with the position taken by my colleague who dealt with appeal Ref. APP/A1720/W/19/3230015, which related to a site elsewhere, in Portchester. I am content therefore, that the PfJoF guidance on acceptable walking distances is not out of date and it provides a reasonable basis for the assessment of whether, having regard to the locations of the appeal sites, walking can be regarded as a genuine choice of transport modes. In addition, PFW indicates that propensity to walk is not only influenced by distance, but also by the quality of the experience, having regard to factors such as the attractiveness and safety of the route.
63. I note that the Council's position regarding the accessibility of the sites is not based on an objection in relation to that matter raised by the Highway Authority, but rather an assessment undertaken by a planning professional with reference to PfJoF, amongst other things. In my view, it does not follow that the weight attributable to the Council's assessment should be reduced. As reported by the appellants, the PfJoF states it is the task of the professional

- planner or engineer to decide if a lower standard is acceptable in given circumstances.
64. There is no dispute that there are a range of services and facilities within 2 kilometres of the appeal sites. However, to my mind, in the absence of any consideration of the 'power of the destinations' and the quality of the experience that is of little assistance. Applying the PfJoF approach, which reflects the 'power of destination', facilities and amenities within its 'acceptable' walking distances of the southern and linked appeal sites are limited to a primary school, a church, and a recreation ground. Within its 'preferred maximum' walking distances there are additionally a college campus (CEMAST), a limited number of small shops and a pub in Bridgemary, an employment area (HMS Collingwood) and four other schools.
65. However, the appeal sites only fall within the catchment area of one of the five schools, Crofton Secondary School, which is barely within the preferred maximum walking distance. Whilst I understand that Crofton Anne Dale Infant and Junior School, which would serve the appeal sites, is within the maximum walking distances for schools identified by the Department for Education, it falls outside the PfJoF preferred maximum walking distances.
66. Although PFW indicates that in residential areas, 400 metres has traditionally been regarded as a cut-off point, the CIHT's more recent *Buses in Urban Developments, January 2018* (BUD) provides more detailed guidance. It identifies maximum walking distances between developments and bus stops with the intention of enabling the bus to compete effectively with the car and to benefit a wide range of people with differing levels of motivation and walking ability. It recommends a maximum walking distance of 300 metres to a bus stop served by a service which is less frequent than every 12 minutes.
67. The SoCGT indicates that the closest bus stop to the appeal sites is on Newgate Lane East and only the southern site would meet that BUD recommendation. Furthermore, the buses return approximately with a frequency of every 75 minutes in each direction and the first northbound bus in the morning, towards Fareham, departs from the bus stop at 09:12 hrs. Notwithstanding that the bus trip duration to the train station may be shorter than the national average trip time by local bus of 36 minutes, to my mind, the start time and frequency of the service would limit the attractiveness of the service as far as northbound commuters are concerned. Whilst there is a bus stop on Tukes Avenue served by a more frequent service, it is significantly further away from the sites than the maximum walking distance for high frequency services recommended by BUD.
68. The SoCGT indicates that the closer of the 2 appeal sites is some 3.7 kilometres from Fareham Railway Station, a distance well beyond the 800 metres identified by PFW.
69. I note that the PfJoF was one of the documents that informed the accessibility standards set out in the Council's *Fareham Local Plan 2037 Background Paper: Accessibility Study 2018*, the application of which in the cases before me appears not to result in a significant difference in outcome compared with the application of the PfJoF guidance.
70. The appellants have applied a Walking Route Audit Tool to the local walking routes, which assesses the attractiveness, comfort, directness, safety, and

coherence of the routes. Whilst a number of the findings are disputed by the Council, I consider that the current condition of the likely route east of the sites to the limited number of shops and the pub referred to in Bridgemary is of greatest concern. That walking route would involve crossing Newgate Lane East and walking along Brookers Lane. However, difficulties crossing Newgate Lane East, due to the speed and volume of traffic, would be satisfactorily addressed by the proposed provision of a Toucan crossing, funded by a contribution secured by the UUB. Currently, the character of the initial section of Brookers Lane would be likely to dissuade users, due to a lack of street lighting and the potential for people to conceal themselves from view from approaching walkers in trees along the southern side of the route, giving rise to potential safety concerns. However, I consider that these matters could be satisfactorily addressed through the provision of unobtrusive lighting and fencing along the southern side of the route, which would be unlikely to have a material adverse impact on the character or appearance of the locality and could be secured by condition. I acknowledge that these improvements may be of some benefit to the wider community, not just residents of the appeal sites, to which I attribute limited weight.

71. In my judgement, the quality of local walking routes could be made acceptable. However, applying the PfJoF and more recent BUD guidance on walking distances to destinations, the number and range of facilities and amenities within the ranges identified would be limited. I consider overall that the accessibility of the area by walking would be poor and, for the most part, walking cannot be regarded as a genuine choice of transport mode.
72. The site subject of previous appeal decision Ref. APP/A1720/W/19/3230015, was found to satisfy LP2 Policy DSP40(ii). However, the factors taken into consideration in relation to that matter included, amongst other things, that the site was well related to the existing urban settlement boundary for Portchester and close to many other dwellings in Portchester, and accessibility to local services and facilities would be similar to that for many of the existing residents of the area. Those circumstances are not directly comparable to those in the cases before me. The appeal sites are not well related to an existing urban settlement boundary or close to dwellings within one. Whilst accessibility to local services and facilities would be similar for existing residents of Peel Common, it is a small settlement relative to which each of the appeal schemes would be larger in terms of households. Under the circumstances, I consider that the policy finding of the previous appeal decision is of little assistance in these cases.
73. Within 5 kilometres of the appeal sites, which is a distance commonly regraded as reasonable cycling distance, there is a much greater range and number of services, facilities, amenities, and employment sites. Furthermore, there are shared cycle pedestrian/cycle routes in the vicinity of the appeal sites which would facilitate access by bicycle to the areas to the north, south, east, and west of the sites. I consider therefore that the sites would be served by good quality cycling facilities and cycling could be regarded as a genuine choice of transport modes. However, having regard to the NTS for 2019, in comparison with 250 trips per person per year associated with walking, only 16 trips per person per year were associated with cycling. To my mind, it is likely therefore, that relatively few future residents of the appeal sites would cycle, reducing the weight attributable to this factor.

74. As I have indicated, the bus services available within the maximum walking distances recommended by BUD are very limited and the nearest train station is located well outside the PfJoF preferred maximum walking distance. I acknowledge that the sites would be within reasonable cycling distances of Fareham Train Station and residents could drive there by car. Nonetheless, I consider overall that the sites would not be well served by good quality public transport, the accessibility of the area by public transport would be poor and, for the most part, it cannot be regarded as a genuine choice of transport modes.
75. The Framework indicates that in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be-or have been-taken up, given the type of development and its location. A Travel Plan for each site has been agreed by the HA. However, in my view, it does not automatically follow that the appeal sites would be sustainably located with reference to accessibility. The *Planning Practice Guidance* (PPG) indicates that the primary purpose of a Travel Plan is to identify opportunities for effective promotion and delivery of sustainable transport initiatives, for example walking, cycling, public transport and tele-commuting, in connection with both proposed and existing developments and through this to thereby reduce the demand for travel by less sustainable modes.
76. The proposed Travel Plan measures include, amongst other things, the provision of: information to promote sustainable modes of travel; electric vehicle charging/parking facilities on the sites; a Travel Plan Coordinator as well as contributions towards: the improvement of the Newgate Lane East crossing at Woodcote Lane/Brookers Lane; the provision of shared pedestrian/cyclist infrastructure along parts of the routes between the appeal sites and local schools; and, supporting the use (travel vouchers for residents) and operation of the existing limited bus service in the vicinity of the sites for a number of years. Having regard to these matters, I am satisfied that a number of appropriate opportunities to promote sustainable transport modes have been provided for, in accordance with the aims of LP1 Policy CS15 and the Framework. However, as identified above, I consider that the attractiveness of the existing bus service to commuters would be limited and, in my view, this casts significant doubt over the indicative Travel Plan target which anticipates an increase in bus service use, notwithstanding some provision for travel vouchers.
77. I conclude that the appeal sites would be in a location with some, albeit limited, sustainable transport options and in this respect would accord with LP1 Policy CS15. However, the limitations are such that they would not be in an accessible area, with particular reference to public transport and walking facilities, and I do not regard the sites as being sustainably located adjacent to an existing urban settlement boundary. Insofar as they seek to ensure that development is sustainably located with reference to accessibility, I consider overall that the proposals would conflict with LP1 Policy CS5, LP2 Policy DSP40 and the Framework.

### ***Spatial development strategy***

78. The reasoned justification for LP1 Policy CS22 indicates that gaps between settlements help define and maintain the separate identity of individual

- settlements. It states that Strategic Gaps do not have intrinsic landscape value but are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green infrastructure/green corridors. The Policy indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
79. The appellants place some reliance on the proposed allocation of land for development in the Fareham-Stubbington Gap in the Regulation 18 consultation draft of the emerging *Fareham Local Plan 2036* (LPe). This included allocation HA2 for residential development on land between Newgate Lane East and Bridgemary, within the Fareham-Stubbington Gap. Whilst the Regulation 19 draft of the LPe did not include that allocation, it was based on the assumed imposition of Government's proposals to introduce a new Standard Method, which was not subsequently supported. However, going forward, there is no certainty that the proposed allocation of HA2 will be reinstated by the Council. Furthermore, even if it were, that proposed allocation was the subject of objections at the earlier stage and there is no dispute that the emerging plan is at a relatively early stage towards adoption. Under the circumstances, I give little weight to the possibility that proposed allocation HA2 would form part of the LPe when adopted.
80. The appeal sites fall within the Fareham-Stubbington Gap. The TR indicates that the purpose of this gap is to avoid coalescence between the settlements of Fareham and Bridgemary with Stubbington and Lee-on-the-Solent. Drawing a straight line east-west across the gap between Stubbington and Bridgemary, the appellants have estimated that the appeal schemes would reduce the gap from some 1.6 km to around 1.1 km. However, to my mind, that cross-country approach does not represent the manner in which the gap is likely to be experienced and, as a result, generally understood.
81. Consistent with the TR, I consider that a key vehicle route between the settlements of Fareham and Stubbington from which the Strategic Gap is experienced is along Newgate Lane East (between Fareham and Peel Common Roundabout)/B3334 Gosport Road (between Peel Common Roundabout and Marks Road, Stubbington). Along that route travellers leave behind the urban landscape of Fareham at HMS Collingwood and Speedfields Park and travel to the edge of Stubbington, via Peel Common Roundabout, through an area which includes the appeal sites and is predominantly characterised by undeveloped countryside. The Strategic Gap designation washes over some development, which includes Newlands' Solar Farm, Peel Common Wastewater Treatment Works (WWTW) and the settlement of Peel Common. However, along the route identified, intervening planting prevents the WWTW from being seen and limits views of the low-profile solar farm to glimpses. Furthermore, I consider that, when seen from those highways to the east and south, 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.
82. In each case, the proposals would involve substantial development to the east of Peel Common and, as identified above, it would be sufficient to tip the balance of the character of the area between Peel Common, Bridgemary and Fareham from predominantly rural to suburban. Whilst Fareham, Peel Common and Bridgemary would remain physically separate, the contribution of this area

to the sense of separation provided by the Strategic Gap would be greatly diminished. I acknowledge that the proposals would not materially alter the experience of the Strategic Gap along the B3334 Gosport Road, between Peel Common and development at Marks Road, as they would not be visible from there. However, the appellants have estimated that 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 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.

83. I consider overall that the proposals would cause significant harm to the integrity of the Fareham-Stubbington Gap and the physical and visual separation of settlements, with particular reference to the experience of travellers along the Newgate Lane East section of the Newgate Lane East/B3334 Gosport Road key route, contrary to the aims of LP1 Policy CS22.
84. Furthermore, in my judgement, the impact on the integrity of the Strategic 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 an existing urban settlement boundary and Peel Common were to remain a small, isolated ribbon of development within the gap. The proposals would fail to minimise any adverse impact on the Strategic Gap, contrary to the aim of LP2 Policy DSP40(iii).
85. There is no dispute that the proposals would accord with criterion (i) of LP2 Policy DSP40, being relative in scale to the demonstrated five-year housing land supply shortfall. Turning then to criterion iv), which requires a demonstration that the proposals would be deliverable in the short term. The current tenant of appeal site A has suggested that the formal procedures associated with the surrender of the agricultural tenancy may delay implementation of that scheme. However, based on the timeline and formal procedures for obtaining possession outlined by the appellants, it appears to me that delivery in the short term would be possible<sup>6</sup>. In any event, this matter could be satisfactorily addressed, in relation to both sites, through imposition of conditions that required reserved matters applications to be made within 12 months of the grant of planning permission and the commencement of development within 12 months of the approval of reserved matters, as suggested by the appellants. Under the circumstances, I am satisfied that the proposals would not conflict with criterion iv) of LP2 Policy DSP40. Nonetheless, they would conflict with criteria ii), iii) and v) and I consider overall that each proposal would conflict with LP2 Policy DSP40 taken as a whole.
86. I conclude that each of the schemes, which would conflict LP1 Policy CS22 and LP2 Policy DSP40, would not accord with and would undermine the Council's Spatial Development Strategy.

### ***Housing land supply***

87. The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated

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<sup>6</sup> Michelmores LLP letter dated 20 January 2021 and Lester Aldridge LLP letter dated 3 February 2021.

against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum. Furthermore, having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period. As I have indicated, the Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply. However, they agree on either basis that the shortfall is material and it is not necessary to conclude on the precise extent.

88. A significant proportion of the difference between the supply figures of the Council and the appellants is associated with applications with a resolution to grant planning permission (709 units) and allocations (556 units).
89. In respect of the majority of the sites with resolutions to grant planning permission, which date from 2018, it remains necessary, before planning permission could be granted in each case, for the Council to complete Appropriate Assessment (AA) to establish whether the scheme would have a significant effect upon European Protected Sites. To inform the AA, it is necessary for the developers to demonstrate that their schemes would not increase the levels of nitrates entering the Solent. In order to facilitate that process, in September 2020, the Council established a legal framework through which developers/applicants can purchase nitrate credits associated with land use at Little Duxmore Farm (LDF). However, at the Inquiry, the Council was unsure whether there would be sufficient capacity at LDF to provide mitigation in relation to all the identified sites and whilst it is seeking to secure additional capacity elsewhere, the associated negotiations are not yet complete. Furthermore, since September 2020, only a relatively small number of dwellings have been taken through this process culminating in the grant of planning permission. With respect to the other sites, which together account for over 500 units, I consider that in the absence of favourably completed AAs there is significant doubt about the deliverability of housing within the five-year period on those sites. Furthermore, AA is not the only issue. In a number of the cases, while some progress has been made, necessary planning obligations have yet to be formally secured. This adds to the uncertainty.
90. The Welborne allocation accounts for 450 units included in the Council's assumed supply figure. The site was subject to a resolution to grant outline planning permission for up to 600 dwellings in October 2019, subject to planning obligations being secured. Although the Council expected the planning obligations to be secured pursuant to section 106 of the *Town and Country Planning Act 1990* by the end of the summer 2020, this was not achieved. In December 2020, the developer submitted amended plans for the site. Whilst in January 2021, the Council resolved to grant planning permission for the revised scheme, it would also be subject to planning obligations and a pre-commencement condition would be imposed to ensure that funding had been secured for the improvement of junction 10 of the M27. At the Inquiry, the Council confirmed that whilst funding sources have been identified, not all the necessary agreements are in place to secure the funds. In light of the limited progress made since October 2019 and the outstanding areas of

uncertainty, I consider it likely that housing delivery on that site within the five-year period will fall well short of that assumed by the Council.

91. Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic<sup>7</sup>.
92. The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come.
93. The appellants anticipate that around 123 of the 190 proposed appeal dwellings could be completed within the current five-year period. Against this background, I consider it likely that each of the appeal schemes would make a modest contribution towards reducing the significant shortfall in housing land supply. Having had regard to other appeal decisions drawn to my attention<sup>8</sup>, I give those contributions substantial weight.

### **Other matters**

#### *Planning obligations*

94. Each of the schemes is supported by a formally completed unilateral undertaking: appeal site A-UUA; and appeal site B-UUB. Amongst other things, they include provisions for: a Solent Recreation Mitigation Strategy contribution; on-site open space and play area provision and maintenance contributions; an education contribution; provisions to secure on-site Affordable Housing delivery, sustainable travel measures as well as the implementation of a Travel Plan. UUB also makes provision for: the implementation of a Chamomile Management Plan, for the purpose of conserving the ecological features in the Chamomile and Meadow areas of the site, consistent with the aims of LP2 Policy DSP13; and, a Toucan crossing contribution. Having had regard to the Council's *Community Infrastructure Levy Regulations Compliance Statement, February 2021*, I consider that the UUs would accord with the provisions of Regulation 122 of the *Community Infrastructure Regulations 2010* and the tests of obligations set out in the Framework. Furthermore, I conclude that the infrastructure provisions referred to above would accord with the aims of LP1 Policy CS20.
95. With reference to the ecological assessments submitted in support of the applications, the appellants have indicated that, subject to mitigation measures which would be secured either by the submitted UU's or by condition, the schemes would each provide moderate ecological benefits for the sites, consistent with LP1 Policy CS4 and LP2 Policy DSP13. Furthermore, measures would be incorporated in the design of the schemes to limit energy and water consumption as well as carbon dioxide emissions, which could be secured by condition and would amount to minor environmental benefits, consistent with

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<sup>7</sup> Statements of Common Ground, January 2021 (paragraphs 7.14).

<sup>8</sup> Such as APP/A1530/W/19/3223010, APP/G1630/W/18/3210903, APP/E5900/W/19/3225474, APP/N1730/W/18/3204011 and APP/G1630/17/3184272.

LP1 Policy CS16. I have no compelling reason to take a different view. However, in my judgement, they do not weigh significantly in favour of the schemes, as the benefits would be only moderate/minor and the Framework commonly requires the provision of net gains for biodiversity, minimisation of energy consumption and the prudent use of natural resources.

96. UUC would secure off-site mitigation for the loss of a low use Solent Wader and Brent Goose site. Having regard to the measures secured by UUA, UUB and UUC and with reference to the 'Shadow Habitat Regulations Assessments' submitted in support of the applications, the appellants have indicated that the proposals would not have an adverse effect on the integrity of any European Protected Sites, consistent with the aims of LP2 Policies DSP14 and DSP15, and this would weigh as neutral in the planning balance. These matters are not disputed by the Council.
97. It is common ground that there is an unmet Affordable Housing need in Fareham Borough. The shortfall appears to be sizeable. Looking forward, the Council's adopted *Affordable Housing Strategy (2019)* identifies a need for broadly 220 Affordable Homes per annum over the period to 2036. This can be compared to the delivery of an average of 76 Affordable Homes per annum in the period 2011-2019, well below the need identified for that period by the Council's *Housing Evidence: Overview Report (2017)*. 40% of the proposed dwellings in each case would comprise Affordable Housing, consistent with the requirements of LP1 Policy CS18. Furthermore, I understand that the commercial profits of Bargate Homes Ltd, which is owned by Vivid and has contractual control of both sites, are reinvested in Vivid's wider Affordable Housing Programme. I consider that the proposals would amount to meaningful contributions towards addressing the identified need and the Affordable Housing benefits attract substantial weight in each case.
98. The Council considers that the public open space provision shown on the illustrative masterplans submitted in support of the applications would be sufficient to meet the requirements of LP1 Policy CS21 and I have no reason to disagree. Whilst I acknowledge that the proposed public open space may be of some value to existing local residents, given the accessibility of the countryside thereabouts, I consider that any benefit in that regard would be small and I give it little weight.

*Economic benefits*

99. The Framework gives encouragement to development that would support economic growth. The proposals would be likely to give rise to a range of economic benefits. For example, the appellants have estimated that the proposed households would be likely to generate expenditure in the region of £6.4 million per annum, some of which would be spent locally. Furthermore, the proposals could support an estimated 191 jobs during the three-year build programme and could generate an additional £33.8 million of gross value added for the regional economy during that period. The proposals would help to support the growth of the economy, which has been adversely affected by the current coronavirus pandemic. I give the economic benefits likely to result from the proposals in each case substantial weight.

*Best and most versatile agricultural land*

100. Appeal site B contains land classified as best and most versatile (BMV) agricultural land, which would be lost as a result of the scheme, contrary to the aims of LP1 Policy CS16, which seeks to prevent the loss of such land. However, with reference to the Framework, which indicates that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the economic and other benefits of BMV agricultural land, I consider that LP1 Policy CS16 is unduly onerous. Furthermore, as BMV agricultural land makes up only a very small proportion of the site, I share the view of the appellants that the weight to be given to the loss is very limited.

*Privacy*

101. At present, Hambrook Lodge occupies an isolated position in the countryside, set well apart from other dwellings. In this context the proposed developments on land adjacent to that property would be likely to have some effect on the privacy of the existing residents. However, the elevations of the dwelling that contain the majority of its habitable room windows are set back from the boundaries shared with the appeal sites. I consider that it would be possible to ensure, through careful design and layout of the schemes controlled at the reserved matters stage, that reasonable levels of privacy would be maintained in keeping with the aims of LP1 Policy CS17.

*Community services and facilities*

102. I do not share the concerns raised by a number of residents of the Borough of Gosport that the proposals would adversely affect their community services and facilities. As indicated above, it is likely that spending associated with the schemes would benefit the local economy. As regards facilities, I understand that the appeal sites are not within the catchment area of Gosport schools. Whilst some future residents may wish to use the recreation ground situated to the southeast on the other side of Newgate Lane East, there is no compelling evidence before me to show that the numbers would be large or that such activity would be problematic.

***Planning balance***

103. The Framework indicates, with reference to succinct and up-to-date plans, that the planning system should be genuinely plan-led. For decision making this means approving development proposals that accord with an up-to-date Development Plan without delay. The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites and so in these cases the relevant policy for determining the acceptability of residential development on the site is LP2 Policy DSP40. I consider that each of the schemes would conflict overall with LP2 Policy DSP40. However, in these cases, that is not the end of the matter.
104. LP1 Policy CS2 sets out the housing development needs in the plan period, and Policy CS6 establishes the settlements and allocations to deliver development needs. However, Policy CS2, which pre-dated the publication of the Framework, does not purport to represent an up-to-date Framework compliant assessment of housing needs. The housing requirement set out in the Development Plan has not been reviewed within the last 5 years and so the

five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This generates a higher figure. To my mind, it follows that LP1 Policies CS2 and CS6 are out-of-date. Furthermore, against this background, I consider that the weight attributable to conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6, which place strict controls over development outside settlement boundaries, is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements<sup>9</sup>.

105. Furthermore, as the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, under the terms of paragraph 11 of the Framework it follows that the policies which are most important for determining the appeals are deemed out of date. The Framework indicates that decisions should apply a presumption in favour of sustainable development and, where the policies which are most important for determining the application are out of date, this means granting planning permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole; or, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. This approach is reflected in LP2 Policy DSP1.
106. Under these circumstances, I consider that little weight is attributable to the identified conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6. This is reinforced by my earlier finding that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies would be reduced.
107. LP2 Policy DSP40 is also deemed out of date for the purposes of paragraph 11 of the Framework. However, I consider, for a number of reasons, it does not automatically follow that conflicts with this Policy also attract little weight, contrary to the approach of my colleague who dealt with appeal decision Ref. APP/A1720/W/18/3209865.
108. Firstly, the DSP40 contingency seeks to address a situation where there is a five-year housing land supply shortfall, by providing a mechanism for the controlled release of land outside the urban area boundary, within the countryside and Strategic Gaps, through a plan-led approach. I consider that in principle, consistent with the view of my colleague who dealt with appeal Ref. APP/A1720/W/18/3200409, this approach accords with the aims of the Framework.
109. Secondly, consistent with the Framework aim of addressing shortfalls, it requires that (i) the proposal is relative in scale to the demonstrated supply shortfall and (iv) it would be deliverable in the short-term.
110. Thirdly, criteria (ii) and (iii) are also consistent with the Framework insofar as they: recognise the intrinsic character and beauty of the countryside by seeking to minimise any adverse impact on the countryside; promote the creation of high quality places and having regard to the area's defining characteristics, by respecting the pattern and spatial separation of settlements;

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<sup>9</sup> CDK5-Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37, para 63.

and, seek to ensure that development is sustainably located. They represent a relaxation of the requirements of Policies LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6 in favour of housing land supply. However, I consider that the shortfall in the Framework required five-year housing land supply, which has persisted for a number of years and is larger than those before my colleagues<sup>10</sup>, indicates that the balance they strike between those other interests and housing supply may be unduly restrictive. Under these circumstances, in my judgement, considerable, but not full weight is attributable to conflicts with LP2 Policy DSP40(ii) and (iii).

111. Fourthly, insofar as LP2 Policy DSP40(v) seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications, it is consistent with the Framework and conflict with that requirement would be a matter of the greatest weight.
112. Whilst the proposals would accord with criteria i) and iv), they would conflict with criteria ii), iii) and v), causing significant harm to the character and appearance of the area, having an unacceptable effect on highway safety, they would not be sustainably located with reference to accessibility and they would fail to minimise any adverse impact on the Strategic Gap. I have found that the proposals would conflict with LP2 Policy DSP40, undermining the Council's Spatial Development Strategy. I consider overall that these matters weigh very heavily against each of the proposals.
113. In each case the proposals would provide a mix of housing types and styles. They would make meaningful, albeit modest, contributions towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply. The appeal schemes would also be likely to provide employment opportunities and economic benefits to the area. In these respects the proposals would be consistent with the Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support economic growth. I give those benefits substantial weight. I give little weight to other identified benefits, such as the proposed measures to secure net gains for biodiversity, the minimisation of energy consumption and the prudent use of natural resources. Although I give a number of the benefits substantial weight, in my judgement, it would fall well short of the weight attributable to the harm identified.
114. I consider on balance that, in each case, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits and the schemes would not represent sustainable development under the terms of either LP2 Policy DSP1 or the Framework. In light of these findings, it is unnecessary for me to undertake an Appropriate Assessment. However, if I had done so and a positive outcome had ensued, it would not have affected the planning balances or my conclusions on these appeals.

### **Conclusions**

115. Whilst acknowledging that appeal scheme A would conform with some Development Plan policies, I conclude on balance, with particular reference to LP2 Policy DSP40, that the proposal would conflict with the Development Plan taken as a whole. Furthermore, the other material considerations in this case

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<sup>10</sup> APP/A1720/W/18/3199119, APP/A1720/W/18/3200409

would not justify a decision other than in accordance with the Development Plan. For the reasons given above, I conclude that appeal A should be dismissed.

116. Whilst acknowledging that appeal scheme B would conform with some Development Plan policies, I conclude on balance, with particular reference to LP2 Policy DSP40, that the proposal would conflict with the Development Plan taken as a whole. Furthermore, the other material considerations in this case would not justify a decision other than in accordance with the Development Plan. For the reasons given above, I conclude that appeal B should be dismissed.

*I Jenkins*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

**Mr D Lintott**

Of Counsel

He called

**Mr I Dudley**

BSc(Hons) MICFor CEnv CMLI

**Mr C Whitehead**

BEng CEng

**Mr J Mundy**

MSc IMICE

**Mr N Sibbett**

CEcol CMLI CEnv MCIEEM

**Ms J Parker**

BA(Hons) MA MRTPI

**Mr R Wright** (conditions/obligations)

**Mr N Gammer** (conditions/obligations)

MSc MCIHT MTPS

**H Hudson** (conditions/obligations)

Solicitor

Lockhart Garratt Ltd

SYSTRA Ltd

Hampshire County Council

The Landscape Partnership

Adams Hendry Consulting Ltd

Fareham Borough Council

Hampshire County Council

Southampton City Council

### FOR THE APPELLANTS:

**Mr C Boyle**

QC

He called

**Mr J Atkin**

BSc(Hons) DIP LM CMLI

**Mr N Tiley**

ARTPI

**Miss M Hoskins**

BA(Hons) MCIHT

**Mr A Jones**

BSc(Hons) MCIHT

**Mr D West**

MEnv Sci(Hons) CEnv MCIEEM

**Mr D Weaver**

BA(Hons) MA MRTPI

**Mr C Marsh** (conditions/obligations)

Pegasus Group

Pegasus Group

Red Wilson Associates

Pegasus Group

WYG

Pegasus Group

Pegasus Group

### INTERESTED PERSONS:

**County Councillor P Hayre**

The Crofton Division of Fareham

**Mrs A White**

**Mr A Thomas**

**Borough Councillor J Forrest**

The Stubbington Ward

**Mr B Marshall**

**County Councillor S Philpott**

The Bridgemary Division

**Mrs A Roast**

**Borough Councillor C Heneghan**

The Stubbington Ward

Interested party

Local resident

Local resident

Interested party

Fareham Society

Interested party

Lee Residents' Association

Interested party

## DOCUMENTS

- 1 Letters notifying interested parties of appeals A and B.
- 2 Appeals notification responses
- 3 Councillor Philpott-updated proof of evidence
- 4 Ms Parker-revised appendices to proof of evidence and errata
- 5 Council-opening statement
- 6 Appellants-opening statement
- 7 Councillor Forrest-proof of evidence
- 8 Statement of Common Ground (Transport)
- 9 Fareham Society-updated proof of evidence
- 10 Councillor Philpott-updated proof of evidence
- 11 Mr Thomas-email dated 10 February 2021
- 12 Red Wilson Associates-Delay Tables Summary Note
- 13 Mr Thomas-email dated 11 February 2021
- 14 Gosport Borough Council-Additional submissions regarding the Newgate Lane South Appeals (12 February 2021)
- 15 Community Infrastructure Levy Regulations Compliance Statement (including education contributions email dated 9 November 2020 and Planning Obligations Supplementary Planning Document
- 16 Bargate Homes-Delivery Rate Update, dated 16 February 2021
- 17a Composite masterplan
- 17b Settlement boundaries proximity plan
- 17c Land south of Funtley Road Committee Report Ref. P/18/0067/OA
- 17d Consolidated conditions schedule
- 18 Mrs White-proof of evidence
- 19 Natural England guidance documents and Conservation Objectives.
- 20 Gosport Borough Council-Additional submissions regarding the Newgate Lane South Appeals (12 February 2021)-references included.
- 21 Land south of Funtley Road Committee Report Ref. P/18/0067/OA, dated 18/07/2018.
- 22 Ms Parker- response to Inquiry document 16
- 23 Council's letter withdrawing reason for refusal (h)-appeal A and (G)-appeal B insofar as they relate to the capacity of the junction of old Newgate Lane/Newgate Lane East
- 24 Fareham Society-proof of evidence summary
- 25 Ms Hoskins-Linsig model results, junction layouts note and extract from the Highway Code
- 26 Highway Authority-Note dated 18 February 2021 regarding highway capacity point raised by Gosport Borough Council
- 27 Councillor Philpott-supplementary notes
- 28 Councillor Hayre-proof of evidence
- 29a Mrs White-proof of evidence summary
- 29b Mrs Roast-proof of evidence summary
- 30 Updated Report to inform HRA Stage 1 and Stage 2
- 31 Plan-Gosport Road Fareham Air Quality Management Area 2017 (A)
- 32 Gosport Borough Council Ward Maps-Peel Common and Bridgemary North

- 33 Pegasus-1) Traffic Flows at the old Newgate Lane and Newgate Lane East Junction and 2) 21 and 21A Bus Service
- 34 Birds Unilateral Undertaking-update
- 35 Appeal A-Main Unilateral Undertaking
- 36 Highway Authority-Note in response to new information provided by the appellants under cross examination of Ms Hoskins, Ms Parker-note on settlement terminology and Mr Gammer-updated proofs of evidence.
- 37 Councillor Philpott-email dated 19 February 2021, air quality clarification
- 38 Tetra Tech-Note on Winter Bird Mitigation Area Nitrogen Budget, 23 February 2021
- 39 Council-email dated 23 February 2021, consultation responses
- 40 Council/appellants-Consolidated Conditions Schedule
- 41 Council-Boundary plans related to Brookers Lane
- 42 Pegasus-Newgate Lane East Capacity note
- 43 Ms Parker-Status and weight of Local Plan Evidence Based Landscape Documents
- 44 Mr Sibbett-Note on qualifying features
- 45 Fareham Society-closing statement
- 46 Highway Authority-Note addressing queries relating to the southern site Unilateral Undertaking
- 47 Planning Inspectorate-contaminated land model conditions
- 48 Councillor Heneghan-consultation response, dated 29 October 2018
- 49 Lee Residents Association-Closing statement
- 50a Council/appellants-additional conditions
- 50b Pegasus-scale and density note
- 51 Councillor Heneghan-proof of evidence
- 52a The Civil Engineering Practice-Technical Note on Flood Risk and Discharge Restriction
- 52b Appeal A-Main Unilateral Undertaking-tracked changes
- 53 Pegasus note-Ownership and status of the Brookers Lane shared footway/cycleway between Newgate Lane East and Bridgemary
- 54 Ms Parker-Further advice on the consultation responses to the Fareham Landscape Assessment (FLA)(2017)(CDG15)
- 55 Tetra Tech-Report to inform Habitats Regulations Assessment Stage 1 and stage 2-updated
- 56 Acon Uk-Air Quality note
- 57 Birds Unilateral Undertaking-update (tracked changes)
- 58 Council-closing statement
- 59 Council-email confirmation, dated 25 February 2021, of the red line site boundary drawing numbers for the applications
- 60 Birds Unilateral Undertaking-update
- 61 Appellants-closing statement
- 62 Formally completed unilateral undertakings

**Land South of Romsey Avenue, Portchester**

**PINS Ref: APP/A1720/W/21/3271412 (LPA Ref: 18/1073/FP)**

**Statement of Common Ground: Five Year Housing Land Supply**

*8<sup>th</sup> July 2021*

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**1. Introduction**

- 1.1. This Housing Land Supply (“HLS”) Statement of Common Ground (“SoCG”) has been prepared by Mr Steven Brown (of Wolf Bond Planning), on behalf of the Appellant, Foreman Homes Ltd and Richard Wright on behalf of Fareham Borough Council. It sets out both the agreed and disputed matters having regard to the five year housing land supply position.
- 1.2. This HLS SoCG identifies the requirement to be met during the five year period, the deliverability of the identified components of supply; and the subsequent five year housing land supply positions of the respective parties.

**2. The Agreed Position**

- 2.1. It is common ground that the Council is not able to demonstrate a five year supply of deliverable housing land against the minimum five year requirement for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 2.2. As such, it is common ground that the Council is not meeting paragraph 59 of the NPPF and, by virtue of footnote 7, paragraph 11(d) is engaged unless disapplied by virtue of paragraph 177.
- 2.3. The shortfall will only be rectified if planning approval is given for housing on sites not originally envisaged for housing in the adopted Local Plan Parts 1 and 2 or through plan-led development delivered through the emerging Local Plan.
- 2.4. In the circumstances, the most important, operative policy for determining the acceptability of residential development on the Site is Policy DSP40.

**3. The Housing Requirement and Five Year Period**

- 3.1. It is agreed between the parties that the five year period to be used for the purpose of calculating the five year housing land supply position for this appeal is 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 3.2. In so far as the strategic policies from the Core Strategy and Development Sites and Policies DPD are more than five years old, it is agreed, by operation of paragraph 73 and footnote 37 of the NPPF, that **the housing requirement falls to be measured against the local housing need figure calculated using the standard method.**

- 3.3. A such, the starting point to calculating the five year requirement is the minimum **539 dwelling annual requirement** derived from the application of the Standard Method. This equates to 2,695 dwellings requirement.
- 3.4. However, and as a result of the Housing Delivery Test (“HDT”) results published in February 2021, it is agreed that it is appropriate to apply a 20% buffer to the requirement.
- 3.5. This results in a minimum five year requirement of **3,234 dwellings for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.**

**4. Housing Supply**

- 4.1. The Council maintains it has a five year supply of 2,310 dwellings. This results in a shortfall of 924 dwellings and a supply of 3.57 years.
- 4.2. The Appellant identifies a supply of 600 dwellings. This results in a shortfall of 2,634 dwellings and a supply of only 0.93 years.
- 4.3. The respective positions are summarised in Table 1 below.

*Table 1: Respective Five Year Housing Supply Positions*

	<b>Fareham Borough Council</b>	<b>Appellant</b>
Minimum 5yr Req. 1 Jan 2021 to 31 Dec 2025	3,234	3,234
Deliverable Supply	2,310	600
Extent of Shortfall	-924	-2,634
No. Years Supply	3.57yrs	0.93yrs

- 4.4. The supply differences are set out in **Appendix 1** attached
- 4.5. As set out above, and on either approach, it is agreed that the Council is unable to demonstrate a five year supply of deliverable housing land.

**5. Implications of the Respective Five Year Positions**

- 5.1. The agreed position between the Council and Appellant is that the Council is not able currently to demonstrate a five year supply of deliverable housing land for the period 1st January 2021 to 31st December 2025.
- 5.2. As such, it is common ground between the Council and Appellant that the Council is not meeting paragraph 59 of the NPPF, thus engaging the presumption in favour of sustainable development at paragraph 11(d) of the NPPF unless disapplied by virtue of paragraph 177.
- 5.3. Whilst the Council and Appellant disagree as to the extent of the shortfall, it is nevertheless agreed, on either position, that the shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant. As such it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall.

- 5.4. In the light of the agreement reached between the parties in relation to the significance of the five year housing land supply shortfall, neither party will call their respective witnesses to deal with housing land supply matters unless such evidence is requested by the Inspector. This will save time and resources and will enable a more efficient inquiry process.
- 5.5. This HLS SoCG is signed and dated below.

### **Signatures**

On behalf of the Appellant:



P MRTPI (Woolf Bond Planning obo Foreman

Signature

Name: Richard Wright MRTPI Fareham Borough Council

Date: 8<sup>th</sup> July 2021

\*\*\*\*\*

## Appendix 1: Site Delivery

The following table sets out the respective positions in relation to the deliverability of the components of supply.

Supply source	Revised Council <sup>1</sup>	WBP	Difference
Outstanding Planning Permissions – Small (104 dwellings) (10% discount)	69	69	0
Outstanding Full Planning Permissions – Large (5+ dwellings)	402	402	0
Outstanding Outline Planning Permissions – Large (5+ dwellings)	296	27 <sup>2</sup>	269
Resolution to Grant Planning Permission – Large (5+ dwellings) (exc Welborne)	742 <sup>3</sup>	0	742
Resolution to Grant Planning Permission – Large (5+ dwellings) (Welborne)	390	0	390
Brownfield Register Sites	276	0	276
Local Plan Adopted Housing Allocations	33	0	33
Windfall	102	102	0
<b>Total</b>	<b>2,310</b>	<b>600</b>	<b>1,710</b>

<sup>1</sup> Supplementary Statement to Newgate Lane East Appeal (3269030)

<sup>2</sup> Sites included in this category by WBP are: Egmont Nurseries, Brook Avenue (8 dwellings); 18 Titchfield Park Road, Titchfield (6 dwellings); east & west of 79 Greenaway Lane (6 Dwellings) and Burridge Lodge (7 dwellings)

<sup>3</sup> Paragraph 5.8 of the Council's Supplementary Statement for Newgate Lane East Appeal indicates that this figure should be 663.

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:	Mr
First Name:	Steve
Last Name:	Carrington
Job Title: (where relevant)	
Organisation: (where relevant)	Foreman Homes Ltd
	c/o Agent
Address:	
Postcode:	
Telephone Number:	
Email Address:	

A3 Please provide the Agent's details:

Title:	Mr
First Name:	Steven
Last Name:	Brown
Job Title: (where relevant)	
Organisation: (where relevant)	Woolf Bond Planning
Address:	
Postcode:	
Telephone Number:	
Email Address:	

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1 and HP4**

**and**

**Omission of Land at Military Road,  
Wallington as an Allocation in Policy H1  
(SHELAA Site Ref 27).**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
8. Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015)
9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in land located to the west of Military Road, Wallington. The Site has been assessed in the SHELAA as Site Ref: 27. It was also proposed as a housing allocation for 26 self and custom build dwellings under Policy HA16 of the 2017 consultation draft Local Plan.
- 1.2. As such, the Site has been promoted through earlier stages of the Local Plan process as sustainable urban extension to Fareham, an acknowledged suitable location for growth within the Borough as indicated in the SHELAA.
- 1.3. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore advocate changes to the Local Plan to address this, including the allocation of our client's land to the west of Military Road, Wallington.
- 1.4. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
- 1.5. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## **2. REPRESENTATIONS AND SUPPORTING INFORMATION**

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)

2.2. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection
Omission site – Land at Military Road, Wallington (SHELAA Ref 27) – failure to include as an allocation in Policy H1	Objection

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
  
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
  
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
  
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
  
- 3.4. To address this requirement for additional homes, we contend that further land should be allocated including the land controlled by our clients to the west of Military Road, Wallington (SHELAA site ref 27). This site can accommodate approximately 26 self and custom building dwellings in a sustainable location.

- 3.5. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities and the allocation of land at Military Road, Wallington can also supply homes to contribute towards to resolving this issue.
  
- 3.6. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
  
- 3.7. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, FBC has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement asset out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.

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<sup>7</sup> (541 x 18) + 1,000

5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

- 5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.
- 5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

## **Conclusions**

- 5.33. The housing requirement and delivery as set out in Policy H1 cannot be said to be sound as it fails to provide for at least 15 years post adoption together with a failure to plan for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### **Changes sought to the Development Requirements in Policy H1.**

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and like Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;

- c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
- d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.

5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.

1. That policy H1 is amended to:
  - A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need (including our clients land at Military Road, Wallington) and
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
2. That consequential amendments are made to the document to reflect these revisions.

## **6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY**

### **General**

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

- 6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.
- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Portchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.

- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
  - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
  - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
  - d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
  - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
  - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

- 6.10. The Inspector’s conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.
- 6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client’s omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 10**):
- 6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.
- 6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 10** is that the shortfall is much greater than purported to be the case by the Council.
- 6.14. The below Table provides a comparison between the housing land supply position set out in the Council’s Published Report to Committee in February 2021, the Council’s updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 10**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

- 6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.
- 6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

### **Suggested Changes to Policy HP4**

- 6.17. Policy HP4 cannot be said to be sound in respect of the following:
- a) Not positively prepared as the policy (alongside others in the document) will fails to provide an effective solution towards maintaining a five years supply of housing,
  - b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.
- 6.18. To address these matters of soundness, the following amendments is proposed:
- 1. That clause c is omitted from policy HP4.

## **7. OMISSION SITE: FAILURE TO IDENTIFY LAND TO THE WEST OF MILITARY ROAD, WALLINGTON AS A HOUSING ALLOCATION FOR APPROXIMATELY 26 SELF AND CUSTOM BUILD DWELLINGS**

### **General**

- 7.1. Through the other representations submitted to the policies of the Plan, there is a need to allocate additional land for housing development. Having regard to the representations and the earlier promotion of the omission site for residential development, the evidence justifies the allocation of the site for circa 26 self and custom building dwellings.
- 7.2. The Site is well related to the urban area. It is not in a strategic gap and nor is it identified as a valued landscape. Moreover, the Site affords a sustainable location in helping to meet identified housing needs.
- 7.3. The Site is currently subject to an outline application for up to 26 custom and self-build dwellings, associated landscaping, amenity areas and a means of access from Military Road (LPA Ref: P/19/0130/OA).
- 7.4. The site was allocated in the draft Local Plan 2036 (policy HA16) as it was considered to be suitable, available and achievable in the SHELAA (December 2019). Since the site was allocated there has been no change in circumstances with regards to ownership, physical changes nor changes to the sustainability of the site, therefore there should be no reason for this site to be omitted from the latest incarnation of the plan.
- 7.5. The SHELAA (April 2021) sets out reasons for discounting the site, and subsequently removing it as an allocation. The reasons set out are: poor pedestrian and cycle links and concerns relating to heritage with regards to the setting of Fort Wallington.
- 7.6. In response to the first reason, there is a proposal to create a footpath as part of an application for a commercial development on the eastern side of Military Road, which is in control of Foreman Homes (P/20/0636/OA). The path will run north-south along Military Road and Standard Way and will create a connection

to local facilities and Fareham town centre therefore ensuring the site is sustainably located. This matter is therefore considered to be addressed.

- 7.7. Regards the second point, any future scheme can be designed around this constraint to allow for views of the Fort from public aspect. The heritage consultant for Foreman Homes has advised that this is an acceptable approach and it is possible to achieve. It is therefore considered that this matter can be addressed.
- 7.8. Development of the site for self and custom build dwellings will be in accordance with paragraph 62 of the NPPF 2021 which states that “housing need for different groups (including those wishing to commission or build their own homes) should be assessed and reflected in planning policies”. There is an identified need for this type of dwelling in the borough as set out in emerging policy HP9 of the Local Plan, the Background Paper: Self and Custom Build Need (prepared to inform the Local Plan 2036) and the Council’s Action Plan (September 2018). The Action Plan sets out the Council’s aims to “positively influence of help secure development opportunities where we can support individuals or organisations in our local communities to deliver high quality self build or custom building to meet demand in the Borough”
- 7.9. On the basis of the evidence prepared in support of the development of the Site for housing, the site has no physical constraints, and is well-related to the existing residential development. It is in close proximity to local services and facilities such that it affords a sustainable location in helping to meet identified housing needs whilst providing for sustainable patterns of growth.
- 7.10. We therefore consider that part of the solution to addressing the identified housing shortfall is to allocate the subject site, land to the west of Military Road, for residential development alongside consequential changes to the Policy Map.

### **Change sought to the Local Plan**

- 7.11. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **land west of Military Road, Wallington (SHELAA Ref: 27) should be identified as a housing allocation for circa 26 self and custom build**

**dwellings, with consequential amendments to settlement boundaries and the other designations, as detailed in other representations.**

## **8. OVERALL CONCLUSIONS**

- 8.1. Our representations have identified a number of concerns with the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
- 8.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.
- 8.3. These matters can be addressed through Main Modifications.

## **9. FINAL REMARKS**

- 9.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 9.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations, including the allocation of our client's site west of Military Road, Wallington for approximately 26 self and custom build dwellings.
- 9.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.



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# **Report to Tonbridge and Malling Borough Council**

**by Louise Crosby and Luke Fleming**

**Inspectors appointed by the Secretary of State**

**Date: 07 June 2021**

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Planning and Compulsory Purchase Act 2004  
(as amended)  
Section 20

## **Report on the Examination of the Tonbridge and Malling Borough Council Local Plan**

The Plan was submitted for examination on 23rd January 2019

The examination hearings were held between 6th and 8th October 2020

File Ref: PINS/H2265/429/8

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## **Abbreviations used in this report**

DtC	Duty to Co-operate
HMA	Housing Market Area
LPA	Local Planning Authority
MoUs	Memorandums of Understanding
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
SDC	Sevenoaks District Council
the Act	Planning and Compulsory Purchase Act 2004 (as amended)
the Plan	Tonbridge and Malling Borough Local Plan

## **Non-Technical Summary**

This report concludes that the Tonbridge and Malling Borough Local Plan (the Plan) is not legally compliant in respect of the Duty to Cooperate (DtC) and, as such, we recommend that the Plan is not adopted.

## Introduction

1. This report contains our assessment of the Tonbridge and Malling Borough Local Plan in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended) (the Act). It considers whether the Plan's preparation has complied with the duty to co-operate (DtC).
2. The revised National Planning Policy Framework (NPPF) was published in July 2018 and further revised in February 2019. It includes a transitional arrangement in paragraph 214 which indicates that, for the purpose of examining this Plan, the policies in the 2012 NPPF will apply. Similarly, where the Planning Practice Guidance (PPG) has been updated to reflect the revised NPPF, the previous versions of the PPG apply for the purposes of this examination under the transitional arrangement. Therefore, unless stated otherwise, references in this report are to the 2012 NPPF and the versions of the PPG which were extant prior to the publication of the 2018 NPPF.
3. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound Plan. The Tonbridge and Malling Borough Local Plan, submitted on 23 January 2019, is the basis for our examination. It is the same document as was published for consultation between 1 October 2018 and 19 November 2018.
4. This report considers whether the Plan's preparation has complied with the DtC. Given our conclusion in relation to the DtC, we do not go on to consider whether the Plan is sound and whether it is compliant with other legal requirements. If a local planning authority cannot demonstrate that it has complied with the DtC at the independent examination of their local plan, then Section 20(7A) of the Act requires that the examiner must recommend non-adoption of the Plan. This is the situation in this case, and it is not, therefore, relevant for us to consider the other matters in this Report. Accordingly, we have not recommended any main modifications.
5. Hearing sessions were held between 6 and 8 October 2020 and they focussed on legal compliance matters including the DtC and Sustainability Appraisal.
6. Further hearing sessions were planned as part of the examination from 3-5 November and on 10 November 2020 to consider other soundness issues. However, following our consideration of the evidence presented by Tonbridge and Malling Borough Council (the Council) and other participants in response to our Matters, Issues and Questions<sup>1</sup> at the hearing session in relation to DtC, and taking into account written representations and discussion at that hearing session we notified the Council in a letter<sup>2</sup> dated 22 October 2020, that we had

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<sup>1</sup> ED56

<sup>2</sup> ED67

significant concerns in respect of legal compliance. The letter also explained that we had asked the Programme Officer to cancel the hearings planned for November 2020 and that we would be writing to the Council as soon as possible setting out our specific thoughts in more detail. The letter also advised that we would not reach a final conclusion on the way forward for the examination until we had had a chance to consider the Council's response to that letter.

7. Our letter<sup>3</sup> to the Council, dated 15 December 2020, set out our concerns with regards to the DtC in some detail. The Council submitted a response dated 29 January 2021<sup>4</sup>, along with a number of appendices. Having fully considered the Council's response and appendices, our final letter<sup>5</sup>, to the Council, dated 2 March 2021, set out our conclusions on this matter and stated that, there were two options before the Council; either to withdraw the Plan from examination or we would write a final report recommending its non-adoption because of a failure to meet the DtC. We gave the Council 21 days to consider which option they wished to pursue. On 11 March 2021 the Council confirmed that it would not be withdrawing the Plan and invited us to prepare a final report at our earliest convenience<sup>6</sup>.

## **Assessment of Duty to Co-operate**

### **Background**

8. Section 20(5)(c) of the Act requires that we determine whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
9. Section 33A of the Act imposes a duty on a local planning authority to co-operate with other local planning authorities, the County Council and prescribed bodies or other persons by engaging constructively, actively and on an ongoing basis in relation to the preparation of a development plan document so far as relating to a strategic matter to maximise the effectiveness of the activity of plan preparation. It makes clear that sustainable development or use of land that would have a significant impact on at least two planning areas is such a strategic matter. Account can only be taken of the engagement undertaken by authorities up to the point of submission of the Plan, as the assessment of compliance with the DtC only relates to the preparation of the Plan.
10. Government policy in the 2012 NPPF paragraphs 178 to 181 sets out the importance placed on planning strategically across boundaries. Paragraph 181

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<sup>3</sup> ED68

<sup>4</sup> ED69

<sup>5</sup> ED81

<sup>6</sup> ED82

states that "local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination" and that "cooperation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development".

11. It is not disputed by the Council that housing is a strategic matter for the purposes of S33A of the Act, which required cooperation as set out above. Whether the DtC has been complied with is a matter of judgement for the examining Inspectors following consideration of the evidence presented by the Council and other participants, both in writing and at the hearing sessions.
12. Sevenoaks District Council (SDC) considers that it is unable to meet all of its own housing needs. It is a neighbouring local authority and forms a large part of the West Kent Housing Market Area (HMA) which also includes a significant part of Tonbridge and Malling Borough, as well as parts of Tunbridge Wells Borough. Our report will focus on the engagement of the Council with SDC, in relation to housing across the HMA. The NPPF (para 47) states that local planning authorities (LPAs) should use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for housing in the HMA, as far as is consistent with the policies set out in this Framework.

**Did the Council know that Sevenoaks District Council considered that it would be unable to meet its own housing needs in full, prior to the submission of their plan for examination in January 2019?**

13. The Council explained at the hearings that it was not clear until SDC's Regulation 19 (of the Town and Country Planning (Local Plan) (England) Regulations 2012 (the Regulations)) Plan was published in December 2018 what the scale of unmet need was and even then it was not certain as the Plan had not been examined by an Inspector and the housing need and requirement found sound. As set out above, the Tonbridge and Malling Regulation 19 Plan was submitted for examination on 23 January 2019 which was before the transitional deadline of 24 January 2019, set out in paragraph 214 of Annex 1 to the July 2018 and February 2019 versions of the NPPF.
14. At the hearings the Council's view was that until SDC's Plan had been consulted on there was uncertainty about whether there was any unmet need and the basis for that. Furthermore, there had not been a process of examination to demonstrate that there were unmet needs and even if there were unmet needs there was a chance that they could be quite small. However, SDC's Regulation 18 Plan which it consulted on, between July and September 2018, identified a need for 13,960 dwellings and identified sites to

meet between 6,582 and 13,382 dwellings<sup>7</sup>. So, at this stage it was clear there was a likely shortfall of at least around 600 dwellings, and this was the best case scenario. At worst it was closer to approximately 7000. While the level of unmet need and the justification for it could be a matter for debate, there is enough here to demonstrate that this was a strategic matter on which cooperation was required. In the submitted SDC Regulation 19 Plan the unmet need was in the order of 3,392 dwellings<sup>8</sup>. The calculation of housing need is not an academic exercise, it is a question of identifying an actual local need.

15. However, much earlier than this, in October 2017 when SDC were at their 'issues and options' stage of plan preparation, the Council wrote to SDC (ED78B), saying, "At this stage and based on the evidence available it is highly unlikely that there would be supportable reasons or indeed the capacity for meeting any unmet need from Sevenoaks in Tonbridge and Malling".
16. This was at a stage in the process when officers in a report to Tonbridge and Malling Council's Planning and Transportation Advisory Board (ED78A), in December 2017, advised that SDC, unlike Tonbridge and Malling Council, was not planning to release Green Belt land to meet its housing need. It also says that, even with some Green Belt releases, "the conclusion is that Sevenoaks will be a significant way adrift from meeting its identified housing needs". So, in our view, it is clear that the Council knew in 2017 that SDC would be likely to reach the judgement that it would be unable to meet its own housing needs in full, even with Green Belt release.
17. The Council's views on market capacity are informed by a Housing Delivery Study (CD HO3) which was published in September 2017. The purpose of the Study was to consider the market capacity and potential pace of housing delivery within the Borough to inform the development of the emerging Local Plan. However, paragraph 1.7 says that "emerging evidence suggests that a number of neighbouring authorities may not be able to meet in full their objectively assessed housing need. Some authorities may therefore ask TMBC whether it is able to help to address an unmet housing need arising". Paragraph 4.8 advises that "...in addition to Tonbridge and Malling's own housing needs, the Council has a Duty to Cooperate with neighbouring authorities and is likely to need through the plan-making process to consider the potential to contributing to meeting unmet housing needs from beyond the borough boundary. A core role of this study is to consider what additional housing delivery the market could potentially accommodate".

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<sup>7</sup> Page 2 of letter dated 28 October 2019, from the Inspector examining the SDC Plan

<sup>8</sup> Paragraph 14 of the Report on the Examination of SDC Plan, dated 2 March 2020

18. It is clear then that one of the motivations for the September 2017 Study was to consider the issue of unmet needs arising in a number of neighbouring authorities. Irrespective of a number of technical concerns raised by representors with regard to whether this evidence demonstrates market capacity issues or not, in our view the Housing Delivery Study is further evidence that shows that the Council knew in 2017 that SDC had or was likely to have unmet need and that they may be asked for help with meeting the need.
19. Also, it is well documented that the Council, along with SDC and Tunbridge Wells were involved in a pilot scheme (West Kent Statement of Common Ground Pilot Project), which appears to have started in 2017. This pilot scheme with the Planning Advisory Service (PAS) was set up to look at the use of Statements of Common Ground in plan making. Paragraph 6.6 of the PAS facilitator's notes, dated April 2018, says "Each of the Council's has a clear figure for its housing need, but whilst Tonbridge and Malling BC is confident that it can meet its need, Sevenoaks DC and Tunbridge Wells BC have not yet completed the work needed to determine whether or not they can meet their housing need. Thus the Councils are not yet in a position to reach agreement on the matter of housing supply". However, paragraph 6.3 of the same notes says, "This may increase the housing land supply but it remains unlikely that Sevenoaks DC will be able to meet its housing need in full". This shows that it was known then that there was likely to be some unmet need in SDC, albeit there was no firm figure.
20. In summary, it appears from the evidence before us that the Council knew for a number of years, prior to the submission of their Plan for examination, that it was highly likely that SDC would reach the judgement that it would be unable to meet its housing need in full. While the scale of the unmet need was uncertain, the overall position was clear well in advance of the submission of the Plan for examination in January 2019. It should, therefore, have been obvious to the Council that this was a strategic matter to which the DtC applied.
21. This should have led to the Council engaging constructively, actively and on an ongoing basis with SDC on unmet housing needs, regardless of whether this was a precise figure or a range, or indeed whether the Council felt it may not be able to accommodate the unmet need in full or in part. The requirement of the Act is for authorities to actively engage to maximise the effectiveness of plan preparation.

**Did the Council engage constructively, actively and on an ongoing basis with SDC on unmet housing needs?**

22. In the Council's Duty to Cooperate Statement (CD SC1), section 8 deals with Cross-Boundary Issues. The table in paragraph 8.1 of this document sets out the strategic cross boundary issues, the key neighbouring authorities/organisations in relation to each issue and the summary of cooperation. Under the housing section of this table the key neighbouring authorities/organisations are listed as Maidstone Borough Council, Ashford Borough Council, Kent County Council and Highways England. It seems that the limited extent of this table is because it only covers authorities where cross boundary issues are specifically covered in the Plan. Nowhere in this document, which is dated January 2019, and therefore postdates the publication of the SDC Regulation 19 Plan on 18 December 2018, is there any mention of unmet housing need in SDC. If there had been any constructive, active and ongoing engagement with SDC ahead of submission on what was clearly a strategic matter, it would be reasonable to expect that this would at least be mentioned in the Council's DtC statement.
23. As set out above, it was apparent from as early as October 2017 there were clear signs that SDC was likely to conclude that it would not be able to meet its housing needs in full. It seems that regular meetings were held between the Council and SDC during the preparation of the Council's Plan, but there is no evidence that unmet housing need in SDC was discussed at these meetings and no meeting minutes have been provided to evidence that housing needs were discussed. The Council say that the discussion was predominantly about 'constraints' to meeting housing needs but no minutes of any of these meetings have been produced as evidence of what was actually discussed. Consequently, there is no evidence before us, that these meetings were used for constructive and active engagement in an attempt to resolve the strategic matter of unmet housing need and maximise the effectiveness of plan preparation.
24. The Council argue that SDC did not formally ask them for help and it was not up to the Council to "make the running", but this is a circular argument with a risk that both parties defer the issue to the other without any meaningful attempt to resolve it. We are obliged to consider whether the Council cooperated and the question of whether or not SDC made any running does not remove the obligation on the Council, particularly as the issue of unmet housing need in Sevenoaks appeared to be well known to both. Moreover, it is clear from the Council's letter sent to SDC in October 2017, where they say "At this stage and based on the evidence available it is highly unlikely that there would be supportable reasons or indeed the capacity for meeting any unmet need from Sevenoaks in Tonbridge and Malling", that such a request would have been likely to be pointless. The letter was therefore a

discouragement to constructive, active and ongoing engagement, because it can reasonably be read as closing the door to cooperation. Indeed, there does not appear to have been much engagement for the next 15 months or so, up to the submission of the Plan for examination. In fact, very little evidence of any meaningful engagement in relation to this particular strategic matter has been submitted for us to take into account.

25. The Council explained at the hearings that, if they had delayed the submission of the Plan to try to accommodate some of the unmet need from SDC, once the SDC Regulation 19 Plan was published in December 2018, they would have had to effectively start plan preparation again. This is because they would have missed the transitional deadline in NPPF paragraph 214 and their housing need would have increased by around 3000 dwellings, due to the introduction of the standard method in the 2018 and 2019 versions of the NPPF<sup>9</sup> and related PPG. Whilst this may have been so, it is not an adequate or legally compliant reason to not engage. Early engagement in 2017, when there was first evidence that SDC were unlikely to be able to meet their housing need, would not necessarily have caused delays to the overall process and to the Council meeting the transitional deadline<sup>10</sup>. Furthermore, the decision to push ahead to submit on or before the 24 January 2019 was entirely a choice made by the Council. Importantly, even if no agreement had been reached on the matter, if constructive, active and ongoing engagement had taken place from the earliest stages of preparation of the Plan, the Plan would have been found legally compliant in relation to the DtC.
26. The conclusion of the SDC Regulation 18 consultation, in September 2018, was some four months prior to the submission of the Plan for examination. At this point the unmet need was still a range and would only be confirmed on conclusion of the Sevenoaks examination. This is something the Council argue is necessary before active and constructive engagement can commence, but we strongly disagree. It should have been clear at this time (i.e. four months prior to submission of the Plan), if not earlier, that there was a strategic matter relating to unmet housing need which required addressing through constructive engagement, regardless of the lack of clarity at the time over the precise volume of unmet need.
27. Whilst it was not clear in 2017, or even later in the process, at the Regulation 18 consultation stage, what the exact level of unmet need was or would be, the fact that SDC considered there was likely to be some unmet need should have led to constructive, active and ongoing engagement between the Council and SDC at that point and subsequently.

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<sup>9</sup> NPPF 2019 Paragraph 60

<sup>10</sup> NPPF 2019 Annex 1, paragraph 214

28. The Council advise that, like SDC, they have large amounts of Green Belt land, which is a constraint to meeting housing needs other than their own. Both authorities have significant areas of Green Belt as well as land in Areas of Outstanding Natural Beauty (AONB). The Council carried out a Green Belt review of land in their own administrative boundary, leading to the release of some Green Belt land in the Plan as well as a proposal to put some land into the Green Belt.
29. However, there is no evidence that at any time the Council cooperated or even considered cooperating with SDC on a joint review of the Green Belt across both of their boundaries to understand the comparative quality across the two authority areas and any potential to amend Green Belt boundaries to fully or more fully meet needs. Nor was there any joint work to assess and reach an agreement on the housing capacity on non Green Belt areas across both authorities or on how that capacity might reasonably be maximised. The Council say the reason for this is that the two LPAs were at different stages of plan making, however the plans were submitted for examination within months of each other. In addition, the fact that the Council disagreed with SDC on the approach they were taking to Green Belt release did not mean the DtC did not apply and could be ignored.
30. In terms of the Council's position about relative timescales, the Council's Regulation 19 Plan was published for consultation on 1 October 2018, around 3 weeks after the conclusion of the SDC Regulation 18 consultation. SDC published their Regulation 19 Plan for consultation on 18 December 2018 and so the fact is the plan-making timescales and processes in Tonbridge and Malling and SDC were actually closely aligned. We can find no credible reason why the Councils could not have engaged constructively and actively during the plan making process in accordance with the duty on them to engage constructively with each other in a meaningful attempt to resolve issues relating to unmet needs.
31. Whilst resolution to the problem of unmet housing needs is not a prerequisite to the Council being able to demonstrate compliance with the DtC, earlier, constructive, active and ongoing engagement, in line with the Act and national policy as articulated in the Framework and PPG, would have been much more likely to result in an effective strategy for meeting SDC's need, whether within the SDC area or elsewhere. Even if in this case the Council considered it unrealistic to contemplate a joint local plan at this point, it might have considered other less formal mechanisms of compliance with the duty, such as aligning plan time-tables and policies and/or joint approaches to plan-making. Any steps of that kind would have demonstrated positive proactive attempts at cooperation.

32. The Council's hearing statement<sup>11</sup>, submitted to SDC's examination, explains the Council's view that it would be unreasonable to expect it to accommodate any unmet housing need for SDC because it faces similar constraints and challenges, is planning to meet its own need in full, and market and infrastructure capacity mean any such external need could not be accommodated. In the circumstances, these could have all been valid issues for discussion and engagement between both authorities, but there is no evidence to indicate that they were actually the subject of any constructive engagement between the authorities.
33. The Council advise that once the actual SDC unmet need is examined and established, they would potentially seek to deal with it through a future review of the Plan. However, such an approach is not in the spirit of the Act or of national policy. The identified need for housing exists now, and the likely existence of unmet need has been known about for some time and is therefore a strategic matter that should have been considered through the DtC in the current round of local plans, not delayed to some future date. Deferring the issue to subsequent plans does not amount to constructive, active engagement, especially when the plan making processes were, in reality, closely aligned.
34. Memorandums of Understanding (MoU) were signed after the submission of both plans and provide no evidence of constructive and active engagement prior to the submission of the Plan and are therefore of no help in demonstrating the DtC has been met. Indeed, the short final MoU simply states, *'TMBC's evidence of meeting the Duty is set out in the Duty to Cooperate Statement (January 2019). The strategic cross-boundary matters and how the Duty was addressed are summarised in section 8 of the DtC Statement. The details are set out in sections 9 to 16. The record of engagement is documented in Appendix A'*. As set out above, the Statement provides no reference to the unmet housing need in SDC. Appendix A is a list of meetings that took place between April 2012 and January 2019 with various organisations, but no minutes have been provided from any of these meetings to show that unmet housing need in SDC was discussed, and moreover from careful consideration of the verbal evidence given by the Council at the hearing sessions, it would seem that it was not discussed at any of the meetings. The only discussion was about the constraints all of the Council's in the HMA were facing in meeting their housing need. Simply discussing constraints does not in itself amount to cooperation.
35. This shortcoming is surprising given that the Council were involved in the pilot scheme (West Kent Statement of Common Ground Pilot Project) with PAS looking at the use of Statements of Common Ground in plan making. Indeed,

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<sup>11</sup> Paragraph 13.19 of Tonbridge & Malling Borough Council Position Statement (ED58)

as part of this project, the Council, SDC, and Tunbridge Wells Borough Council all agreed in April 2018 that the need to address the matter of unmet housing need was the most significant issue to be addressed in any Statement of Common Ground<sup>12</sup>. This also shows that by April 2018 the Council and SDC had acknowledged that it remained unlikely SDC would be able to meet its housing need in full<sup>13</sup> and despite this, there is no evidence of cross boundary working with SDC and others as a way of seeking to ensure that housing needs were met in full across the HMA. Moreover, the NPPF at paragraph 181 provides advice to LPAs on how to demonstrate evidence of effective cooperation in relation to cross-boundary impacts. This suggests the use of, among other things, memorandums of understanding. It adds that 'cooperation should be a continuous process of engagement from initial thinking through to implementation...'. There is no evidence that this approach was followed.

36. Despite knowing that, as early as 2017, SDC was indicating it would be likely to have unmet housing need, it is reasonable for us to conclude on the basis of everything that we have considered that the Council failed to engage constructively, actively and on an ongoing basis with SDC on that strategic matter. An active process of ongoing, active and constructive engagement might or might not have led to a more positive outcome despite the constraints of market capacity, infrastructure capacity, Green Belt and AONB designations. However, what is certain is that, if parties choose not to engage with each other, there will be little prospect of difficult but important cross-border issues being resolved in relevant strategic matters. If there is no cooperation on such matters, then the effectiveness of plan preparation is unlikely to be maximised.

**If a plan is found to have failed the DtC, is it possible to proceed with the Examination?**

37. In a letter to the Planning Inspectorate, dated 18 June 2019, the Secretary of State stressed to Inspectors the importance of being pragmatic in getting a plan in place that, in line with paragraph 35 of the 2019 NPPF, represents a sound plan for the authority.
38. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This 2015 letter also stresses the importance of Inspectors working in a pragmatic way with councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within 5 years of adoption, giving councils the option to undertake

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<sup>12</sup> Sevenoaks District Council v Secretary of State for Housing Communities and Local Government [2020] EWHC 3054 (Admin)

<sup>13</sup> ED69A, Appendix D, paragraph 6.3

further work to address shortcomings identified at examination and highlighting significant issues to councils very early on and giving councils the full opportunity to address issues. However, the failure we have identified cannot be remedied during the examination since any failure in DtC cannot be resolved after submission of the Plan because the duty relates to the period of plan preparation which has ended. Once we had considered all of the evidence pertaining to DtC presented in writing and orally at the hearing sessions we immediately notified the Council of our concerns and cancelled the future hearings. We gave the Council opportunities, prior to the hearing sessions, during the hearing sessions and afterwards, to provide additional evidence confirming its approach to complying with the DtC undertaken prior to the submission of the Plan for examination.

39. In examining the Plan we have had this advice in the forefront of our minds and we have worked in a pragmatic way with the Council towards achieving a sound plan as far as practicable. However, we have identified a failure of legal compliance in relation to the DtC.
40. It is reasonable for us to conclude that the DtC, as set out in section 33A of the Act, has not been met.

## **Overall Conclusion and Recommendation**

41. The DtC in Section 33A of the 2004 Act has not been met for the reasons set out above and we, therefore, recommend that the Plan is not adopted.

*Louise Crosby and Luke Fleming*

Inspectors



The Planning Inspectorate

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# **Report to Sevenoaks District Council**

**by Karen L Baker DipTP MA DipMP MRTPI**

**an Inspector appointed by the Secretary of State**

**Date 2 March 2020**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Sevenoaks District Local Plan**

The Plan was submitted for Examination on 30 April 2019.

The Examination Hearings were held between 24 and 26 September 2019 and between 1 and 3 October 2019.

File Ref: PINS/G2245/429/7

## **Abbreviations used in this Report**

DtC	Duty to Co-operate
HMA	Housing Market Area
HPS	Hearing Position Statement
IPe	Intelligent Plans and Examinations
the Plan	Sevenoaks District Local Plan
MHCLG	Ministry of Housing, Communities and Local Government
MM	Main Modification
NPPF	National Planning Policy Framework
OAN	Objectively Assessed Need
PAS	Planning Advisory Service
PPG	Planning Practice Guidance
SoCG	Statement of Common Ground
SHMA	Strategic Housing Market Assessment

## **Non-Technical Summary**

This Report concludes that the Sevenoaks District Local Plan (the Plan) is not legally compliant in respect of the Duty to Co-operate (DtC) and, as such, I recommend that the Plan is not adopted.

## Introduction

1. This Report contains my assessment of the Sevenoaks District Local Plan (the Plan) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). The National Planning Policy Framework (NPPF) 2019 makes it clear in paragraph 35 that local plans are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. It goes on to say that in order to be sound, a local plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the Examination is the assumption that the local planning authority has submitted what it considers to be a legally compliant and sound plan. The Sevenoaks District Local Plan Proposed Submission Version<sup>1</sup>, dated December 2018 and submitted on 30 April 2019, is the basis for my Examination. It is the same document as was published for consultation between 18 December 2018 and 3 February 2019.
3. This Report considers whether the Local Plan's preparation has complied with the Duty to Co-operate (DtC). Given my conclusions in respect of the DtC, I do not go on to consider whether the Plan is sound and whether it is compliant with the other legal requirements. If a local planning authority cannot demonstrate that it has complied with the Duty at the independent Examination of their Local Plan, then Section 20(7A) of the Act requires that the Examiner must recommend non-adoption of the local plan. This is the situation in this case, and it is not, therefore, necessary for me to consider the other matters further in this Report.
4. Hearing sessions were held between 24 and 26 September 2019 and between 1 and 3 October 2019. These focussed on legal compliance matters, including the DtC, and matters of soundness in relation to the Local Plan Strategy, Green Belt, Housing Need, Housing Requirement, Housing Distribution and Housing Supply, along with the Sustainability Appraisal.
5. Further Hearing sessions were planned as part of this Examination between 5 and 7 November 2019 and between 12 and 14 November 2019 to consider other soundness matters including: individual housing allocations; Gypsy and Traveller provision and allocations; employment need, requirement, distribution and supply; individual employment allocations; transport and infrastructure; the historic environment; open space, recreation and community facilities; the natural environment and biodiversity; climate change, flooding and water management; and, health, well-being and air quality. However, following my consideration of the evidence presented by the Council and other participants in response to my Matters, Issues and Questions<sup>2</sup> at the Hearing sessions during the first two weeks, and taking into account the written representations and discussion at those Hearing sessions, I had significant concerns in respect of legal compliance, namely the DtC, and soundness.

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<sup>1</sup> SDC001

<sup>2</sup> ED8

6. Following the first two weeks of Hearing sessions, I notified the Council in my letter<sup>3</sup>, dated 14 October 2019, that I had significant concerns about a number of aspects of the Plan, both in terms of legal compliance and soundness. This letter also stated that, given these concerns, I had asked the Programme Officer to cancel the further Hearing sessions planned for November and that I was preparing a letter setting out my thoughts in more detail which would be with the Council shortly afterwards. It also confirmed that I would not reach any final conclusions on the way forward for the Examination until I had had the opportunity to consider the Council's response to that letter.
7. Although I had concerns regarding soundness, these were issues which I would have needed to explore further, it is the failure to comply with the legal DtC which necessitated a halt to the Examination proceedings. Any failure in the DtC cannot be rectified once the Plan has been submitted for Examination because the DtC applies specifically to Plan preparation, and Plan preparation ends when the Plan is submitted for Examination.
8. My letter<sup>4</sup> to the Council, dated 28 October 2019, set out my concerns with regards to the DtC in some detail. The Council submitted responses<sup>5</sup> to this and to my earlier letter, along with a number of appendices. I replied<sup>6</sup> on 19 November 2019 to say that I would be responding after the pre-Election period, in line with the Planning Inspectorate's published position in this regard.
9. Having fully considered the Council's responses and appendices, my final letter<sup>7</sup> to the Council, dated 13 December 2019, set out my conclusions on this matter and stated that, unless the Council confirmed that it intended to withdraw the Plan from Examination, the only course of action open to me would be to prepare a Report concluding that the Plan is not legally compliant in respect of the DtC and recommending that it should not be adopted. In its letter<sup>8</sup>, dated 3 January 2020, the Council confirmed that it would not be withdrawing the Plan from Examination and asked that I issue my Report as soon as possible.

### **Main Modifications**

10. I have found a failure in respect of the DtC and, as such, I have no option but to recommend that the Plan should not be adopted. Accordingly, I have not concluded on any other matters in connection with the Plan and, as a result, I would not be able to recommend any Main Modifications [MMs].

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<sup>3</sup> ED37

<sup>4</sup> ED40

<sup>5</sup> ED38, ED38A, ED41, ED42, ED42A, ED42B and ED42C

<sup>6</sup> ED43

<sup>7</sup> ED44

<sup>8</sup> ED45

## Assessment of Duty to Co-operate

### ***Has the Council demonstrated that it has engaged constructively, actively and on an on-going basis in the preparation of the Local Plan?***

11. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by Section 33A in respect of the Plan's preparation.
12. Section 33A requires that a local planning authority co-operates with other local planning authorities, the County Council and prescribed bodies or other persons in relation to the preparation of the Plan. This duty requires the Council to engage constructively, actively and on an on-going basis in the preparation of the Plan, so far as it relates to a strategic matter. A strategic matter includes the sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas.
13. Government policy, set out in paragraph 26 of the NPPF, says that effective and ongoing joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. It goes on to say that, in particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere. Co-operation is, therefore, about maximising the effectiveness of plan preparation.
14. The Plan, as submitted, identifies a need for 13,960 dwellings between 2015 and 2035, but sets out a requirement for 10,568 dwellings, which would amount to an unmet need of 3,392 dwellings. The Council advanced a position<sup>9</sup> during the Examination which sought to reduce the unmet need. However, it would still have left an unmet need of 1,316 dwellings, even if I had agreed with the Council's position.
15. It is common ground between the Council and most parties to the Examination that housing is a strategic matter upon which the Council should engage constructively, actively and on an on-going basis with its neighbours. I concur with this view. The Council published a DtC Statement<sup>10</sup> in May 2019, following the submission of the Plan for Examination, which sets out the activities undertaken by the Council, including meetings with neighbouring authorities, at both Officer and Member level, and the production of a joint evidence base with neighbouring authorities in the West Kent Housing Market Area<sup>11</sup> [HMA].

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<sup>9</sup> Housing Supply Update Paper – C2 Update [ED23]

<sup>10</sup> SUP006 and SUP006a-d

<sup>11</sup> The West Kent Housing Market Area includes Sevenoaks District Council, Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council.

16. Whether the DtC has been complied with is a matter of judgement for the examining Inspector following consideration of the evidence presented by the Council and other participants, both in writing and at the Hearing sessions.
17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment<sup>12</sup> (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area<sup>13</sup> (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.
18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement<sup>14</sup> and Appendices<sup>15</sup> and in Appendix 1: Schedule A<sup>16</sup> attached to its letter<sup>17</sup>, dated 18 November 2019, with the minutes of most of these meetings<sup>18</sup> provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group<sup>19</sup> and the West Kent Statement of Common Ground (SoCG) Pilot Programme group<sup>20</sup>.
19. The minutes<sup>21</sup> of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues

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<sup>12</sup> Sevenoaks and Tunbridge Wells Strategic Housing Market Assessment, prepared by GL Hearn Limited, September 2015 [HOU001]

<sup>13</sup> The West Kent HMA includes Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council

<sup>14</sup> SUP006

<sup>15</sup> SUP006a, SUP006b, SUP006c and SUP006d

<sup>16</sup> ED42A

<sup>17</sup> ED42

<sup>18</sup> No minutes have been provided of the meetings held on 6 December 2017, 22 January 2018 and 14 March 2018, although summaries of the meetings on 22 January 2018 and 14 March 2018 are provided in the West Kent Statement of Common Ground (SoCG) Pilot Project Facilitator's Note, dated 3 April 2018 (updated by the amended version of this note dated 10 April 2018 and submitted by the Council as part of its Appendix 3: Duty to Co-operate Appendices [ED42C]).

<sup>19</sup> This group is made up of the three West Kent Housing Market Area (HMA) authorities, namely Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council.

<sup>20</sup> This group, facilitated by the Planning Advisory Service (PAS), also included the West Kent HMA authorities.

<sup>21</sup> Pages 172-174 of SUP006a

and Options (Regulation 18), do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary<sup>22</sup> of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPe), held on 22 January 2018, set out in the Facilitator's Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

20. The notes<sup>23</sup> of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks 'is testing options to assess the way forward'. The summary<sup>24</sup> of the meeting, held on 14 March 2018, set out in the Facilitator's Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated. The Facilitator's Note<sup>25</sup> does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say<sup>26</sup> that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.
21. The Council has since stated, in Appendix 1: Schedule A<sup>27</sup> to its letter<sup>28</sup>, dated 18 November 2019, that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect, as it referred to Sevenoaks District Council planning to meet its OAN in full. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note<sup>29</sup>, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are

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<sup>22</sup> Page 185 of SUP006a

<sup>23</sup> Pages 182-183 of SUP006a

<sup>24</sup> Page 185 of SUP006a

<sup>25</sup> Paragraphs 5.1 and 5.2

<sup>26</sup> Paragraph 6.1

<sup>27</sup> ED42A

<sup>28</sup> ED42

<sup>29</sup> West Kent SoCG Pilot Project Facilitator's Note, dated 10 April 2018, set out in 2a of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that 'the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue'. Paragraph 6.6 concludes that, 'each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need. Thus, the Councils are not yet in a position to reach agreement on the matter of housing supply'. As such, it is apparent that, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.
23. The minutes<sup>30</sup> of the West Kent DtC meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the DtC meetings refer to addressing the unmet need in Sevenoaks is at the DtC meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted<sup>31</sup> that 'officers discussed the potential requirement for a follow up letter<sup>32</sup> to request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.
24. Although the DtC statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.
25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have

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<sup>30</sup> Pages 191-192 of SUP006a

<sup>31</sup> Page 194 of SUP006a

<sup>32</sup> Letters were sent to neighbouring authorities requesting that they assist with Sevenoaks' unmet housing need in April 2019.

not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>33</sup> within the HMA.

26. In paragraph 13.2 of its HPS, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers 'did not receive any formal requests to address unmet housing need' from Sevenoaks District Council.
27. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.
28. In paragraph 1.04 of its HPS, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.
29. I appreciate that these neighbouring authorities say<sup>34</sup> that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does

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<sup>33</sup> Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council

<sup>34</sup> Letters dated 21 and 27 November 2019 set out in 3a and 3b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.

*Statements of Common Ground*

30. In order to demonstrate effective and ongoing joint working, paragraph 27 of the NPPF says that strategic policy-making authorities should prepare and maintain one or more Statements of Common Ground (SoCGs), documenting the cross-boundary matters being addressed and progress in co-operating to address these. These should be produced using the approach set out in national planning guidance and be made publicly available throughout the plan-making process to provide transparency.
31. The Council has submitted a number of SoCGs<sup>35</sup> as supporting documents, some of which were provided following the submission of the Plan for Examination, on 30 April 2019. These include several SoCGs with neighbouring authorities, including Tunbridge Wells Borough Council<sup>36</sup> and Tonbridge and Malling Borough Council<sup>37</sup>, which were signed on 21 and 30 May 2019 respectively. The agreed actions within these documents in respect of housing are to 'engage through the wider DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London's growth, large scale developments and opportunities for meeting any unmet need' and to 'undertake a 5 year review of the Local Plan'; and, 'to engage through the wider DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to strategic housing matters' respectively.
32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email<sup>38</sup> to MHCLG, dated 15 March 2019, the Council says that it 'is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.' However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They imply that these matters will be dealt with in any review of the Plan. However, the Duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination.
33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.
34. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents engagement in relation to a solution in the future, not the submitted Plan. At the DtC Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders'

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<sup>35</sup> SUP007a – SUP007i

<sup>36</sup> SUP007h

<sup>37</sup> ED6

<sup>38</sup> Email from James Gleave, dated 15 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan.

*The timing of engagement*

35. The Council refers to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. The Council says, in its letter<sup>39</sup> dated 18 November 2019, that it 'could have gone back to neighbours at this point', but decided not to, as it was felt that, as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated, 'it was therefore extremely unlikely that a higher unmet need would be met elsewhere'. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.
36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that 'all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other' at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that 'at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.' However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.
37. The full extent of unmet need only became apparent to the Council following the consideration of the responses to the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs. This would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage. However, there is no evidence to show that this occurred. Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have

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<sup>39</sup> ED42

been able to accommodate some of Sevenoaks' unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.
39. It is noted that neighbouring authorities have not indicated any willingness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks' housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need.

#### *Peer Review*

40. The peer review process undertaken by the Council consisted of advice<sup>40</sup> from Intelligent Plans and Examinations (Ipe) in November 2018; a PINS' Advisory Visit<sup>41</sup> in February 2019; MHCLG advice<sup>42</sup>; and, a review of the Plan and PAS Workshop<sup>43</sup> on 24 April 2019.
41. The advice from Ipe following its meeting with the Council on 1 November 2018, considered several matters, including housing need and delivery, however, it made no mention of the extent of unmet housing need in the District, or how this could be addressed. The purpose of the PAS Workshop, which was held six days before the Plan was submitted for Examination and led by Ipe, was 'to provide advice on the implications of the DtC for the soundness assessment of the Plan' and 'to meet with neighbouring authorities,

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<sup>40</sup> Revised Note in respect of the preparation of the Sevenoaks Local Plan, prepared by Laura Graham of Ipe, dated 4 December 2018, set out in 1a of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>41</sup> PINS Advisory Visit Note, prepared by Inspector Jonathan Bore, dated 6 February 2019, set out in 1b of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>42</sup> MHCLG correspondence, meeting 6 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>43</sup> Note on the Duty to Co-operate and the Local Plan, prepared by Ipe, dated 7 May 2019, set out in 1d of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

so they could outline their respective positions regarding meeting development needs in West Kent.'

42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings<sup>44</sup> in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan<sup>45</sup>, prepared by IPe, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement<sup>46</sup>. This note concludes that 'none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working'.
43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, the PAS Workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.
44. The Council says that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, several points were raised in relation to the DtC at the Advisory Visit<sup>47</sup> carried out by the Planning Inspectorate in February 2019, as set out in the note<sup>48</sup> of this meeting.
45. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet need and that it could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

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<sup>44</sup> This revised figure took account of proposed changes to the Plan period being put forward by the Council for consideration during the Examination.

<sup>45</sup> ED42B

<sup>46</sup> SUP006, SUP006a, SUP006b, SUP006c and SUP006d

<sup>47</sup> The Planning Inspectorate carries out Advisory Visits to local planning authorities ahead of submission to provide advice on procedures and to help them achieve a sound plan.

<sup>48</sup> The PINS Advisory Visit Meeting Note is set out in 1b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C].

46. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS Workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the DtC Statement was not submitted until May 2019. Nor would it have had the benefit of the time available to an Inspector for the examination of that detailed and complex evidence or the discussion at the Hearing sessions.
47. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement<sup>49</sup> in May 2019, in which it states that 'KH<sup>50</sup> advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPe<sup>51</sup>, submitted in November 2019, does not state that the DtC has been met or that KH advised that this was the case.
48. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective.

*If a Plan is found to have failed the Duty to Co-operate, is it possible to proceed with the Examination?*

49. The Secretary of State wrote to the Planning Inspectorate, on 18 June 2019, in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority.
50. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also stresses the importance of Inspectors working in a pragmatic way with Councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.
51. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to

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<sup>49</sup> SUP006d

<sup>50</sup> KH was Keith Holland of IPe, working on behalf of PAS.

<sup>51</sup> ED42B

proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.
53. For the reasons set out above the DtC set out in Section 33A has not been complied with.

## **Overall Conclusion and Recommendation**

54. The DtC in Section 33A of the 2004 Act has not been complied with for the reasons set out above and I, therefore, recommend that the Local Plan is not adopted.

*Karen L Baker*

Inspector



Neutral Citation Number: [2020] EWHC 3054 (Admin)

Case No: CO/1417/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13/11/2020

**Before :**

**MR JUSTICE DOVE**

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**Between :**

**Sevenoaks District Court**  
**- and -**  
**Secretary of State for Housing Communities and**  
**Local Government**

**Claimant**

**Defendant**

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**Ms Saira Kabir Sheikh QC and Charles Merrett (instructed by Sharpe Pritchard) for the**  
**Claimant**  
**Richard Moules (instructed by GLD) for the Defendant**

Hearing dates: Thursday 3rd September 2020  
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**Approved Judgment**

## **Mr Justice Dove :**

### Introduction

1. The claimant is a local planning authority who prepared the Sevenoaks District Local Plan (“the SDLP”) for its administrative area. The claimant challenges the decision of the Inspector appointed by the defendant to undertake the examination of the SDLP who concluded that the claimant had failed to comply with the duty to cooperate set out in section 33A of the Planning and Compulsory Purchase Act 2004. The claim is advanced by the claimant on four grounds. The first ground is that the Inspector erred in law in failing to apply a margin of appreciation when considering the test under section 33A of the 2004 Act. Ground 2 is the contention that the Inspector failed to correctly interpret and apply the duty to cooperate, and in reality conflated that duty with the requirement that a plan be sound. Ground 3 is that the Inspector failed to have regard to material considerations and in particular to consider the material evidence that was placed before her. Finally, Ground 4 is a challenge based on the contention that the Inspector’s reasons were inadequate.
2. This judgment will firstly set out the facts in relation to the case, secondly, rehearse the relevant legal framework and, thirdly, deal with the submissions advanced and the conclusions reached in relation to the four grounds on which this application is advanced.

### The facts

3. The claimant’s administrative area contains a significant element of Green Belt as well as areas which are designated as an Area of Outstanding Natural Beauty. Its district forms part of the West Kent Housing Market Area (the “HMA”) and has further functional and economic relationships with London boroughs to the north of its administrative area.
4. The claimant began the preparation of its proposed SDLP in 2015 and at that time the evidence for it started to be collected. In September 2015 a Joint Strategic Housing Market Assessment (“SHMA”) was published, having been prepared jointly for the HMA by the claimant together with the other local planning authorities in the HMA: Tunbridge Wells and Tonbridge and Malling Borough Councils. Other technical work in relation to the assessment of the Green Belt and provision for gypsies and travellers was prepared by the claimant. The claimant undertook two rounds of consultation under the provisions of Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012, the first in relation to issues and options in August 2017, and then a further consultation on the draft SDLP from July through to September 2018. In a witness statement before the court to explain the factual background to the preparation of the SDLP, James Gleave, who is the Strategic Planning Manager for the claimant, explains that at the Regulation 18 stage of plan preparation the extent of any unmet housing need as a result of the SDLP’s proposals was unknown “because views were still being gathered on what the Plan ought to contain and the council’s ‘call for sites’ process remained open until October 2018”. Thus, Mr Gleave observes, that it was not clear what proportion of unmet housing need might arise in the claimant’s district.

5. Between 8 December 2018 and 3 February 2019 the claimant undertook the consultation required by Regulation 19 of the 2012 Regulations on the SDLP in its proposed submission version. The proposed submission version identified that based upon the defendant's standard methodology the annualised housing need for the claimant's district was 698 dwellings, giving rise to a total of 13,960 dwellings over the 20-year plan period from 2015 to 2035. The housing land supply which was proposed in the SDLP was 10,568 dwellings or approximately 75% of the total housing need derived pursuant to the standard methodology. The plan was submitted for examination on the 30 April 2019.
6. For the purposes of the examination the claimant prepared a Duty to Cooperate Statement ("the Statement") setting out its case and the evidence in support of the conclusion that the duty to cooperate had been satisfied in the preparation of the SDLP. The Statement presents the evidence in a number of themes. Firstly, it alludes to the preparation of a joint evidence base, referring to the SHMA set out above and other studies and plans which were jointly prepared with relevant authorities. Secondly, the Statement refers to discussions which had occurred with a wide variety of statutory bodies ranging from Natural England and the Environment Agency to Highways England and Network Rail. The Statement then turns to discussions with neighbouring authorities. Reference is made to the Kent Planning Officer's Group as a forum (complemented by the Kent Planning Policy Forum) which meet regularly to discuss common issues in relation to plan making and allied concerns. Annexed to the statement are the notes of meetings with other public bodies, and in particular neighbouring authorities, which had occurred since the outset of preparation of the SDLP in 2015. The statement then records the statements of common ground which had been signed with a wide variety of local authorities and public bodies in respect of the various cross-boundary strategic issues which were engaged with the SDLP process. Alongside this documentation the Statement also set out discussions which had taken place at an elected member level with adjoining local authorities and briefings which had occurred with local MPs. Finally, the Statement also sets out the elements of peer review to which the SDLP process had been subject since the Regulation 18 draft consultation.
7. Whilst it is clear that the duty to cooperate, so far as it was relevant to the SDLP process, engaged a number of strategic issues, for the purposes of this judgment it is necessary to focus upon the strategic issue of housing need since, as will be seen, that was the issue which was principally of concern to the Inspector. In that connection it is necessary to set out the contents of the statements of common ground with, in particular, the neighbouring authorities of Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council, along with the conclusions of the peer review which was undertaken and relied upon in relation to the housing issue.
8. A statement of common ground was agreed between the claimant and Tonbridge Wells Borough Council on the 21 May 2019. Having set out the issue in relation to unmet housing need within the SDLP the statement of common ground records as follows:
  - “2.1.5 Discussions have taken place with neighbouring authorities in the HMA to discuss assistance with any unmet need, but no authority has been in a position to assist SDC with its unmet need.

2.1.6 TWBC is currently preparing its second Regulation 18 version of the Draft Local Plan for consultation, which includes the vision, objectives and growth strategy, overarching strategic policies, place shaping policies and detailed Development Management Policies.

2.1.7 TWBC is also constrained by the Green Belt (22%) and the Area of Outstanding Natural Beauty (70%) as well as areas of flood risk and traffic congestion. The Regulation 18 Draft Local Plan identifies the need for 13,560 dwellings in accordance with the Standard Methodology. Taking into account homes already built since 2013 and sites benefiting from planning permission and allocations within the existing Site Allocations Local Plan, TWBC is aiming to allocate land to meet the remaining balance of 8,914 (Note: this is still subject to change following ongoing work) dwellings. TWBC is seeking to meet its full objectively assessed need across the borough through development at a number of settlements, strategic release of Green Belt at Paddock Wood/Capel to allow expansion of the settlement and a new garden settlement within the Green Belt at Tudeley also within Capel Parish.

2.1.8 It is understood that, at present, TWBC is unable to assist SDC with unmet housing need, due to the constraints on both local authorities, and their inability to meet housing needs beyond their own, irrespective of unmet needs elsewhere.

2.1.9 Consequently, both councils will continue to work together and identify the position as both TWBC and SDC prepare to review their Local Plan every 5 years.

#### Actions

TWBC and SDC will engage through the wider Duty to Cooperate forum with other neighbouring authorities outside the West Kent housing market area in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London growth, large scale developments and opportunities for meeting any unmet need.

TWBC and SDC to each undertake a 5 year review of their respective Local Plans.”

9. The position in the statement of common ground is supported by the material contained within Tunbridge Wells Borough Council’s Hearing Position Statement for the purposes of the examination. The Hearing Position Statement observes that up until 11 April 2019 there had been discussions in relation to matters, including the meeting of housing need, and that those discussions were reflected in the observations made by Tunbridge Wells Borough Council during the Regulation 19 consultation, where they stated that there should be no presumption that there was any capacity within the Tunbridge Wells Borough Council area to accommodate unmet need from another

authority area. The Hearing Position Statement records that on the 11 April 2019 Tunbridge Wells Borough Council received a communication from the claimant formally asking whether or not they were in a position to meet any of the claimant's unmet housing need. At the duty to cooperate workshop on the 24 April 2019 (which is addressed further below) Tunbridge Wells Borough Council made clear that they would not be able to meet any of the claimant's unmet housing need. The Hearing Position Statement does however record as follows:

“1.06 It is considered pertinent to note that if the request from SDC to meet its unmet need had been made at any point prior to the submission of TWBC's comments on Sevenoaks regulation 19 representations then those representations would have addressed this issue more fully.”

The Hearing Position Statement goes on to record the observations made within the Statement of Common Ground and set out above and to indicate that the position from their perspective remained the same.

10. Tonbridge and Malling Borough Council also provided a hearing statement for the purposes of the examination. In their hearing statement they explain that during the consultations on both the Regulation 18 and Regulation 19 versions of their own Local Plan they had not received any request from the claimant to address unmet housing need. In the hearing statement they set out that there had been regular meetings between Tonbridge and Malling Borough Council and the claimant to address cross-boundaries strategic matters engaging the duty to cooperate. The essence of the position which they placed before the Inspector is set out in the following paragraphs of their hearing statement:

“13.5. It is evident that TMCB faces similar constraints and challenges to Sevenoaks District Council for that part of the Borough covered by the West Kent HMA. However, TMBC's response during plan-making has and continues to be significantly different to that of Sevenoaks District Council.

13.6. TMCB has responded positively to the Government's policy for plan-making by addressing in full its assessed need for housing plus some flexibility to adapt to rapid change. This is summarised in the TMBC Spatial Topic Paper. This has been challenging but TMBC understands that if suitable patterns of development are to be delivered and if the Local Plan is to positively address the acute need for housing, as demonstrated by the median housing affordability ratio, then sufficient sites need to be allocated for development to ensure there is no unmet need. This includes the removal of approximately 160 hectares of land from the Green Belt in the West Kent HMA to provide for residential development, as explained in the TMBC Green Belt Exceptional Circumstance Topic Paper.

13.7 Before addressing the matter of whether or not the unmet housing need could be accommodated in Tonbridge & Malling Borough it is important to first question whether it is reasonable

for Sevenoaks District Council to expect TMBC to address it. Given the similarities between the two authorities (see above), TMBC considers that it is entirely inappropriate to ask the Borough Council to accommodate unmet housing need in an area with the same constraints that have been dismissed by Sevenoaks District Council. It is important to bear in mind that the part of Tonbridge & Malling Borough falling within the West Kent HMA is wholly within the Green Belt (with the exception of the settlements not washed over by the designation).

13.8 If Sevenoaks District Council had adopted a similar positive approach to meeting the housing development needs of their area in full, it is possible that there would be significantly less or no unmet need to consider. It is unreasonable to expect TMBC to not only meet their assessed need for housing in full but to accommodate unmet housing need from Sevenoaks District Council who are facing similar constraints.

...

13.19 To conclude, it would be unreasonable to expect Tonbridge & Malling Borough Council to accommodate unmet housing need from Sevenoaks District Council given that TMBC is facing very similar constraints and challenges and is planning to address in full its own assessed housing need. Not only would it be unreasonable but factors including Housing Market Areas, market capacity and infrastructure mean that TMBC could not accommodate the identified unmet housing need.”

11. In addition to the contributions made by the local authorities directly concerned in the duty to cooperate, representations were also made, in particular to the examination process, by other parties who were interested in the issue. Representations were made both for and against the conclusion that the duty to cooperate had been satisfied in the present case. Whilst some reliance was placed upon this material by both parties at the hearing of this case, it suffices to record that there were a number of participants in the examination who maintained that the claimant had not complied with the duty to cooperate and that this was a fundamental flaw in the preparation of the SDLP.
12. As set out above the claimant placed reliance in support of its contention that the duty to cooperate had been satisfied upon the peer review of the plan process which had been commissioned as a cross-check in relation to the process. The first element of this work was the invitation extended by the Planning Advisory Service (“PAS”) to the claimant to participate in a pilot project in relation to the preparation of statements of common ground. This invitation was extended to and accepted by both the claimant and also Tonbridge Wells Borough Council and Tonbridge and Malling Borough Council. The programme led to a sequence of meetings, culminating in the preparation of notes reflecting the outcome of the project, dated the 3 April 2018. Paragraph 5.2 of the note of the discussions indicates that the need to address the matter of unmet housing need was acknowledged on all sides as the most significant issue that needed to be addressed in any statement of common ground between the parties. The note then considers the question of housing need in the three districts in the HMA, and from paragraph 6.1

onwards sets out the position in each of the authorities, and thereafter at paragraphs 8.4-8.5 notes the risks in the current position. The note provides as follows:

“6.1 Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017. In Sevenoaks the OAN of 11,740 (578 dpa) compares with an indicative figure of 13,960 (698 dpa) based on the government’s standardised methodology. In Tunbridge Wells the SHMA gives an OAN of 696dpa, which is consistent with the government’s indicative figure of 692 dpa using the proposed standard methodology.

6.2 The situation in Tonbridge and Malling is more complex. The evidence base, which includes an up to date SHMA covering 2 housing market areas, gives an OAN of 696 dpa. This is significantly lower than the indicative figure of 859 dpa using the proposed standardised methodology. Members have agreed to continue with 696 dpa figure. The Council accepts the standardised methodology and will reflect this as national policy in its Local Plan. However it proposes to demonstrate that the higher figure is undeliverable based on past trends and capacity issues. This position will be supported by evidence including the housing deliverability study prepared by G L Hearn in September 2017. The Council’s concerns are clarified in more detail in its consultation response to Planning for the Right Homes in the Right Places.

6.3 The emerging Tonbridge and Malling Local Plan, if it continues to propose a housing supply which is lower than the standardised OAN, clearly presents a risk to finalising an agreed SoCG. Whilst at present neither Sevenoaks or Tunbridge Wells will require Tonbridge and Malling to accept unmet need, it is possible that the reverse may apply. Even if all three Councils sign up to a SoCG which includes a lower housing figure for Tonbridge and Malling than the standard methodology indicates, this could be undermined when its Local Plan is examined.

...

8.4 The greatest risk to this SoCG is the decision by Tonbridge and Malling to continue plan for a level of housing supply which is below the OAN identified by the government’s standard methodology. As Tonbridge and Malling takes its Local Plan forwards it will be relying on evidence which states that capacity and delivery issues prevent it from states that capacity and delivery issues prevent it from meeting the higher OAN.

8.5 Whilst both Sevenoaks and Tunbridge Wells are aiming to meet their standard methodology OANs, both are heavily

constrained by green belt and infrastructure issues and are unlikely to be capable of accommodating unmet need from Tonbridge and Malling. This pilot project is not the appropriate place to address this matter in detail. However if the final SoCG is to have any real meaning and to be robust in supporting the three Local Plans there will need to be some hard talking within the group on this matter. This is a potential showstopper in terms of the utility of the SoCG and its capability of serving its desired purpose”

13. At a later stage it emerged that the note of the 3 April 2018 (which the claimant had included within the appendixes to the statement) had in fact been superseded in a subsequent note dated 10 April 2018. It seems that the representative of Tonbridge and Malling Borough Council had, in response to receipt of the 3 April 2018 draft, made suggestions in relation to amendments to the draft, including the observation that the claimant would have elements of unmet housing need. Thus, paragraphs 6.1 and following of the note were redrafted as follows:

“6.1 During the short lifespan of this pilot project there have been several changes to both the policy background, for example the revised draft of the NPPF issued for consultation on 5 March 2018 and to the emerging evidence base which will support the three Local Plans. Consequently the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue. The current situation, at the end of the pilot project, is as follows.

#### Sevenoaks DC

6.2 In Sevenoaks the OAN of 12,400 compares with an indicative figure of 13,960 based on the government’s standardised methodology. With Regulation 19 submission planned to take place in early 2019 it likely to fall outside the NPPF transition period, therefore the higher figure will apply. However the district is highly constrained, with 93% of the district lying within the Green Belt and 60% within AONBs.

6.3 The Council is currently examining the potential of releasing some Green Belt land where a convincing exceptional circumstances case is made. This would mean that any proposed development would need to deliver evidenced social and community benefits as well as housing. Sites where this might be the case will be the subject of Regulation 18 consultation. This may increase the housing land supply but it remains unlikely that Sevenoaks DC Tonbridge and Malling DC will be able to meet its housing need in full.

#### Tonbridge and Malling BC

6.4 The evidence base for the Tonbridge and Malling Local Plan, which includes an up to date SHMA covering two housing

market areas, gives an OAN of 696 dpa. This is significantly lower than the indicative figure of 859 dpa using the proposed standardised methodology. However the position has changed since the pilot project began with the revised NPPF draft proposing a transitional period for introducing the standardised methodology of assessing housing need. Provided the Regulation 19 submission can be made within the transition period, as proposed by the Council, then the lower locally derived OAN can be used. This level of housing growth is considered deliverable.

#### Tunbridge Wells BC

6.5 When the pilot project commenced Tunbridge Wells BC was planning to meet its locally derived OAN as determined by the joint SHMA which was updated in 2017. The SHMA sets an OAN of 696 dpa for Tunbridge Wells, which is consistent with the government's indicative figure of 692 dpa using the proposed standard methodology. Recently updated evidence on strategic flood risk suggests that some re appraisal may be necessary, but the Council is still endeavouring to ensure that it can meet its own housing need.

#### Summary

6.6 Each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling BC is confident that it can meet its need, Sevenoaks DC and Tunbridge Wells BC have not yet completed the work needed to determine whether or not they can meet their housing need. Thus the Councils are not yet in a position to reach agreement on their housing needs. The councils are not yet in a position to reach agreement on the matter of housing supply.”

14. In autumn 2018 the claimant commissioned Intelligent Plans and Examinations (IPE) to undertake a review of the Regulation 18 draft of the SDLP, with a particular focus on the Green Belt and the question of exceptional circumstances. A meeting was held on 1 November 2018, and on the 4 December 2018 Ms Laura Graham, who had undertaken the review, produced a report of her advice. Within that advice she noted that there was “no absolute requirement in the NPPF to meet housing need”, but that if development needs could not be met outside the Green Belt it would be necessary to demonstrate through the sustainability appraisal process that the consequences of not meeting that need had been fully and properly addressed.
15. On the 17 December 2018 the claimant contacted the Planning Inspectorate (“PINS”) with a view to arranging an advisory visit in order to assess the plan which was at that stage in the midst of the Regulation 19 consultation (the Regulation 19 consultation closed on the 4 February 2019). On the 6 February 2019 the advisory visit from PINS was undertaken by an experienced Inspector, Mr Jonathan Bore. One of the important topics for discussion at that meeting was the change that the claimant was considering to altering the base date of the SDLP to 2019-35. The note of the advisory visit identifies

that the plan fell seriously short of meeting its housing need in full, based upon the standard method. In relation to the duty to cooperate the note of the meeting records as follows:

“The Duty to Cooperate

Sevenoaks haven’t sent formal letters asking other authorities to accommodate unmet need. They say they don’t want to, because no authorities are willing to help with unmet need and asking the question would sour relations with them. Some neighbouring authorities such as Tandridge may also have unmet need. There is a SoCG with other authorities and a MOU with Maidstone, but the Council did not say that there is constructive engagement among the neighbouring authorities to resolve the issue, nor could they point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated.”

16. The note goes on to record the comments on the issues made by Mr Bore at the meeting. In particular, within the comments on the issues he noted as follows:

“If the OAN really could not be accommodated within the District, I said that there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis. Currently, despite the MoU and SoCGs, this did not appear to exist in a positive form. I said that any Inspector would look closely at this in regard to whether the Duty to Cooperate had been fulfilled.”

17. The advisory visit by Mr Bore on behalf of PINS was followed by correspondence from the defendant seeking to understand how the visit had gone, and offering assistance from PAS in relation to guiding the future progress of the plan. This correspondence led to a meeting on the 6 March 2019 between Mr Gleave and a colleague from the claimant and representatives of the defendants. The notice of the meeting of the 6 March observes as follows:

“Sevenoaks asked whether MHCLG meets with LPAs on a regular basis following an Advisory Visit or whether there were particular concerns with the emerging Sevenoaks plan. MHCLG explained that following the AV the Department had been made aware that there were some potentially significant issues with housing numbers and Duty to Co-operate, and constraints including Green Belt. Given these could be potential ‘showstoppers’ MHCLG wanted to talk through the issues, find out what further work Sevenoaks may be doing in respect of these and to discuss whether there is any assistance MHCLG could provide as the authority prepares its plan for submission.

In terms of the Duty to Co-operate, Sevenoaks explained they had met regularly with neighbouring authorities at Officer and Member level to discuss x-boundary issues, of which housing

need was a standing item on the agenda. In addition, a regular Kent-Planning Officers Group was held at Kent County Council. This operates along similar lines to the ALBPO forum in London and serves to update colleagues on Local Plan preparation. Statements of Common Ground are currently being prepared with neighbours on strategic cross-boundary matters, including housing need.

...

DR advised that the balance between protecting the environment and meeting housing needs was a planning judgement that had to be made locally. SH set out that the approach the LPA took would need to be justified, both in terms of why the authority was unable to meet its own needs and the reasons behind neighbouring authorities not being asked to accommodate some of Sevenoaks needs.”

18. On the 11 April 2019 Mr Gleave, on behalf of the claimant, wrote to neighbouring planning authorities in relation to the progress that was being made in respect of the plan. They were also invited to an event which was being facilitated by PAS to be held later in the month. The correspondence contains the following in relation to the duty to cooperate:

“The Council is of the view that all authorities bordering Sevenoaks, and Kent County Council, have engaged actively and on an on-going basis to meet the provisions of the Duty to Co-operate. In particular, Statements of Common Ground (SoCGs) are in the process of being agreed to formally clarify if it is possible to meet unmet housing needs from adjoining areas. Notwithstanding the provisions of the SoCG and for the sake of completeness, I write to formally ask if is in a position to meet any of Sevenoaks’ unmet housing need as outlined above. In the event that this is not possible, I would also be grateful for your views on the preparation of a joint sub-regional strategy to address future housing requirements.”

19. The duty to cooperate workshop took place on the 14 April 2019 and a note was prepared minuting the meeting. An experienced former Inspector, Mr Keith Holland, facilitated the workshop. Updates were provided by the local planning authorities who attended and, in particular, the update from the claimant identified that the SDLP housing supply left a shortfall measured against the standard methodology requirement of approximately 1,900 dwellings across the plan period, equating to about 17%. The claimant provided a summary of the activities which they had undertaken in order to address the duty to cooperate. Following discussion of the issues a note records Mr Holland advising that in his view “SDC has done all it can and is able to demonstrate that it has satisfied the duty to cooperate requirement”. This note of the workshop then records further discussions in relation to the potential to a sub-regional strategy to address unmet housing needs across the area.

20. A note of these meetings held with PAS was also provided by IPe who undertook the work for PAS. Their note covers both the meeting which was held on the 17 April 2019 and a first meeting between Mr Gleave and his colleagues on behalf of the claimant and Mr Holland. The claimant's position as expressed in the SDLP was explained to Mr Holland in the meeting on the 17 April 2019 and noted as follows:

“2.2 The discussion focussed on the implications of the DtC for the soundness assessment of the SLP. At the time of the meeting, the Council's intention was to submit the SLP for examination at the end of the month (it was subsequently submitted on 30 April 2019). The discussion included a review of advice provided by Laura Graham of IPe and Jonathan Bore from the Planning Inspectorate (PINS). SDC feels that there is a degree of inconsistency between the PINS advice and that provided by IPe. SDC believe that the advice from PINS is based on a misunderstanding of the approach being adopted by the SDC. In the view of the SDC, PINS failed to fully appreciate that the council attempts unmet housing need as an exceptional circumstance justifying consideration of Green Belt (GB) land release. What PINS calls a “Council imposed impediment” (the provision of infrastructure for the existing community) is not the defining exceptional circumstance consideration – it is simply the logical requirement that any development in the GB needs to be accompanied by adequate infrastructure. In other words, SDC believes that PINS has placed too much emphasis on the infrastructure point and not enough on the unmet need consideration.”

21. The note prepared by IPe in relation to the workshop on the 14 of April 2019 provides as follows in relation to the views expressed in respect of the duty to cooperate:

“3.3 The message regarding the importance of the DtC and the way it is dealt with at local plan examinations was repeated. All parties present appreciate how important the local duty is and how it has the potential to derail examinations. Each of the councils present outlined the position they are in at present regarding their development plans. From the discussion, it is clear that none of the authorities present are in a position to help meet any unmet housing need generated by SDC. In fact, most of the authorities believe that they are unlikely to be able to meet their own needs. The discussion thus confirmed and reinforced the contention made in the Submission version of the SLP that the Council is unable to meet its own needs and cannot rely on the DtC to resolve the problem. The importance of preparing a clear and convincing narrative for the forthcoming SDC local plan examination was again stressed.

3.4 The importance of continuing to seek to meet development needs in West Kent through cooperative strategic working was discussed. In this regard, the need for a strategic approach to infrastructure was emphasised. KH explained the importance of

getting member involvement and buy-in to any strategic work and that the more formal the process, the more likely it was to convince a local plan examiner that the councils are doing all they can to use the DtC effectively. Cllr Piper expressed severe reservations about the likelihood of effective strategic planning because of what he described as an inconsistency between the political message provided by the government regarding the GB and the guidance in the NPPF. KH pointed out that under the DtC there is nothing to stop local authorities undertaking joint strategic planning of the sort that previously happened in the South East through SERPLAN (London and South East Regional Planning Conference). KH also explained that the policy in the NPPF makes it clear that where there are exceptional circumstances local authorities can revise GB boundaries, but that this must be done through their local plans and not through the development management process.”

22. On the 30 April 2019 the plan was submitted for examination. As set out above Statements of Common Ground with neighbouring authorities were produced as part of the examination process. The examination hearing sessions commenced on the 24 September 2019, and issues in relation to the duty to cooperate were canvassed on the first day of the hearing. On the 14 October 2019 correspondence was received by the claimant from the Inspector raising concerns that she had in relation to whether or not the claimant’s approach to the SDLP had met the requirements of the duty to cooperate. There then followed further correspondence between the claimant and the Inspector which it is unnecessary to rehearse in detail for the purposes of this judgment. Suffice to say, that during the course of that exchange of correspondence the claimant provided detailed responses and further documentation including, for instance, the corrected note of the 10 April 2018. By the 13 December 2019 the Inspector had confirmed her view that the claimant had not discharged the duty to cooperate and therefore indicated that unless the claimant intended to withdraw the plan from examination the only course available was for her to produce a report concluding that the plan was not legally compliant. On the 3 January 2020 the claimant requested that the Inspector issue her report as soon as possible. This led to the production of the Inspector’s final report issued to the claimant on the 2 March 2020 and comprising the decision which is the subject of this challenge.
23. The Inspector’s final conclusions in relation to the issues with respect to the duty to cooperate are set out in the decision which is under challenge. In order to provide the full context for the Inspector’s decision it is necessary to set out her conclusions at some length. At the outset of her decision the Inspector set out that the starting point for the examination was the assumption that the local authority had submitted what it considered to be a legally compliant and sound plan. She confirmed that this was the basis for her examination. She further set out by way of introduction that having reached conclusions in relation to the duty to cooperate she did not go on to consider whether the plan was sound or was compliant with other legal requirements. She points out that if the local planning authority cannot demonstrate that the duty to cooperate has been complied with then, under section 20(7A) of the 2004 Act, the examiner is bound to recommend non-adoption of the local plan. In her decision the Inspector addresses the evidence in relation to the duty to cooperate in the following paragraphs:

“17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.

18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement and Appendices and in Appendix 1: Schedule A attached to its letter, dated 18 November 2019, with the minutes of most of these meetings provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group and the West Kent Statement of Common Ground (SoCG) Pilot Programme group.

19. The minutes of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues and Options (Regulation 18), do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPE), held on 22 January 2018, set out in the Facilitator’s Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

20. The notes of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks ‘is testing options to assess the way forward’. The summary of the meeting, held on 14 March 2018, set out in the Facilitator’s Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

The Facilitator's Note does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.

21. The Council has since stated, in Appendix 1: Schedule A to its letter, dated 18 November 2019, that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect, as it referred to Sevenoaks District Council planning to meet its OAN in full. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that 'the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue'. Paragraph 6.6 concludes that, 'each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need. Thus, the Councils are not yet in a position to reach agreement on the matter of housing supply'. As such, it is apparent that, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.

23. The minutes of the West Kent DtC meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the DtC meetings refer to addressing the unmet need in Sevenoaks is at the DtC meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted that 'officers discussed the potential requirement for a follow up letter to

request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.

24. Although the DtC statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.

25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>1</sup> within the HMA.

26. In paragraph 13.2 of its HPS, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers 'did not receive any formal requests to address unmet housing need' from Sevenoaks District Council.

27. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need

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following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.

28. In paragraph 1.04 of its HPS, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.

29. I appreciate that these neighbouring authorities say that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.”

24. The Inspector went on to address the statements of common ground which had been prepared in order to deal with cross-boundary issues. Her conclusion in relation to those statements of common ground is set out as follows:

“32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email to MHCLG, dated 15 March 2019, the Council says that it ‘is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.’ However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They imply that these matters will be dealt with in any review of the Plan. However, the Duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination.

33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.

34. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents engagement in relation to a solution in the future, not the submitted Plan. At the DtC Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders' meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan.”

25. The Inspector then proceeded to consider the question of the timing of the engagement in relation to, in particular, the extent of unmet housing need which was the strategic issue at the heart of her concerns in relation to the duty to cooperate. She sets out her conclusions in relation to this issue in the following paragraphs:

“35. The Council refers to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. The Council says, in its letter dated 18 November 2019, that it ‘could have gone back to neighbours at this point’, but decided not to, as it was felt that, as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated, ‘it was therefore extremely unlikely that a higher unmet need would be met elsewhere’. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.

36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that ‘all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other’ at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that ‘at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The

best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.’ However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.

37, The full extent of unmet need only became apparent to the Council following the consideration to the responses of the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs. This would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage. However, there is no evidence to show that this occurred. Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have been able to accommodate some of Sevenoaks’ unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.

39. It is noted that neighbouring authorities have not indicated any willingness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks’ housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been

significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need.”

26. The Inspector then proceeded to consider the peer review processes which had been undertaken by the claimant, in terms of external advice from IPE in November 2018, the PINS advisory visit in February 2019, the advice which had been received from the defendant and the review of the plan and the PAS workshop which had occurred on the 24 April 2019. Dwelling initially on the PAS workshop, and subsequently focusing on the other elements of peer review, the Inspector's conclusions are set out as follows:

“42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan, prepared by IPE, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement. This note concludes that ‘none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working’.

43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, the PAS Workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.

44. The Council says that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, significant concerns were raised in relation to the DtC at the Advisory Visit carried out by the Planning Inspectorate in February 2019, as set out in the note of this meeting.

44. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet

need and that it could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

45. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS Workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the DtC Statement was not submitted until May 2019. Nor would it have had the benefit of the time available to an Inspector for the examination of that detailed and complex evidence or the discussion at the Hearing sessions.

46. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement in which it states that 'KH advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPE, does not state that the DtC has been met or that KH advised that this was the case.

47. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective."

27. The final point addressed by the Inspector was whether it would be possible to proceed with the examination, applying the defendant's indication in correspondence with PINS that Inspectors should be pragmatic in getting plans into place. Her conclusions in relation to this point, and indeed the position overall, are set out in the following paragraphs of her decision.

"49. The Secretary of State wrote to the Planning Inspectorate, on 18 June 2019, in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority.

50. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also

stresses the importance of Inspectors working in a pragmatic way with Councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.

51. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.

53. For the reasons set out above the DtC set out in Section 33A has not been complied with.”

28. In the light of these conclusions the Inspector reached the overall decision that the duty to cooperate had not been complied with and therefore she was bound to recommend that the plan not be adopted.

The law

29. The SDLP, as a development plan document, has to be prepared in accordance with the provisions contained within Part 2 of the Planning and Compulsory Purchase Act 2004. Section 19 of the 2004 Act sets out certain requirements in relation to the contents of a development plan document. The relevant provisions of section 20 of the 2004 Act in relation to independent examination are as follows:

“20. Independent examination

(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.

(2) But the authority must not submit such a document unless-

(a) they have complied with any relevant requirements contained in the regulations under this Part, and

(b) they think the document is ready for independent examination.

...

(4) The examination must be carried out by a person appointed by the Secretary of State.

(5) The purpose of an independent examination is to determine in respect of the development plan document-

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound and

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.

...

(7) Where the person appointed to carry out the examination-

(a) has carried it out, and

(b) considers that, in all circumstances, it would be reasonable to conclude-

(i) that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, and

(ii) that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation, the person must recommend that the document is adopted and given reasons for the recommendation.

(7A) Where the person appointed to carry out the examination –

(a) has carried it out, and

(b) is not required by subsection (7) to recommend that the document is adopted, the person must recommend non-adoption of the document and give reasons for the recommendation.

(7B) Subsection (7C) applies where the person appointed to carry out the examination-

(a) does not consider that, in all circumstances, it would be reasonable to conclude that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, but

(b) does consider that, in all circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation.

(7C) If asked to do so by the local planning authority, the person appointed to carry out the examination must recommend modifications of the document that would make it one that-

(a) satisfies the requirements mentioned in subsection (5)(a), and

(b) is sound.”

30. As can be seen from the provisions of section 20, of particular note for present purposes is the provision contained in section 20(5) that the purpose of the independent examination includes an examination of whether the plan is sound, and also whether the local planning authority has submitted a document that has been prepared in compliance with the duty under section 33A of the 2004 Act in relation to its preparation. By virtue of the provisions contained within section 20(7), (7B) and (7C), where the Inspector determines that it would not be reasonable to conclude that the local planning authority had complied with the section 33A duty then the Inspector can neither recommend modifications nor adoption of the document. This is in effect what happened in the present case.

31. It is not disputed that the duty under section 33A of the 2004 Act applied to the preparation of the local plan by virtue of section 33A(3) of the 2004 Act. The nature and content of the duty is described in the following provisions of section 33A:

“33A Duty to co-operate in relation to planning of sustainable development

(1) Each person who is—

(a) a local planning authority,

(b) a county council in England that is not a local planning authority, or

(c) a body, or other person, that is prescribed or of a prescribed description, must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising

the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

(3) The activities within this subsection are—

(a) the preparation of development plan documents,

(b) the preparation of other local development documents,

(c) the preparation of marine plans under the Marine and Coastal Access Act 2009 for the English inshore region, the English offshore region or any part of either of those regions,

(d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs

(a) to (c) that are, or could be, contemplated, and

(e) activities that support activities within any of paragraphs (a) to (c), so far as relating to a strategic matter.

(4) For the purposes of subsection (3), each of the following is a “strategic matter”—

(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and

(b) sustainable development or use of land in a two-tier area if the development or use—

(i) is a county matter, or

(ii) has or would have a significant impact on a county matter.”

32. It will be noted from section 33A(7) that a person who is seeking to comply with the duty to cooperate must have regard to guidance issued by the defendant on how that duty is to be complied with. Material in that regard is contained both within the National Planning Policy Framework (“the Framework”) and in the Planning Practice Guidance

(“the PPG”). The relevant provisions of the Framework dealing with the duty to cooperate are set out in paragraphs 24-27 of the Framework as follows:

“Maintaining effective cooperation

24. Local planning authorities and county councils (in two-tier areas) are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries.

25. Strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans. They should also engage with their local communities and relevant bodies including Local Enterprise Partnerships, Local Nature Partnerships, the Marine Management Organisation, county councils, infrastructure providers, elected Mayors and combined authorities (in cases where Mayors or combined authorities do not have plan-making powers).

26. Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

27. In order to demonstrate effective and on-going joint working, strategic policy making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.”

33. Whilst addressing the provisions of the Framework it is worthwhile at this stage to note that the claimant’s argument includes the contention that the Inspector confused the requirements of the duty to cooperate with the examination of soundness required pursuant to the provisions of section 20(5). The policy in relation to whether or not a plan is sound is to be found in paragraph 35 of the framework in the following terms:

“35. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs and is informed by agreements with other authorities, so that

unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework.”

34. Turning to the PPG, it contains a considerable amount of guidance relating to the preparation of statements of common ground including their contents, subject matter and format. Of particular relevance to the issues in the present case are the provisions of the PPG dealing with the question of whether or not local planning authorities are required to reach agreement on strategic matters, and what should be done if they are unable to secure such agreements. The parts of the PPG dealing with this point are as follows:

“Are strategic policy-making authorities required to reach agreement on strategic matters, and what should an authority do if they are unable to secure these agreements?”

Strategic policy-making authorities should explore all available options for addressing strategic matters within their own planning area, unless they can demonstrate to do so would contradict policies set out in the National Planning Policy Framework. If there they are unable to do so they should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their plans for examination. Authorities are not obliged to accept needs from other areas where it can be demonstrated it would have an adverse impact when assessed against policies in the National Planning Policy Framework.

Inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or are not relying on the inspector to direct them. Where a strategic policy-making authority claims it has reasonably done all that it can to deal with matters but has been unable to secure the cooperation necessary, for example if another authority will not cooperate, or agreements cannot be reached, this should not prevent the authority from submitting a plan for examination. However, the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any

outcomes achieved; this will be thoroughly tested at the plan examination.”

35. In *Zurich Assurance Limited v Winchester City Council* [2014] EWHC 758 Sales J (as he then was) explained both the substance of the obligation imposed by section 33A and the role of the court in a challenge of the kind presently under consideration in the following terms:

“109. The duty to co-operate imposed by section 33A applies (so far as relevant in this case) in respect of the preparation of development plan documents “so far as relating to a strategic matter” (subsection (3)), as defined in subsection (4) (“sustainable development or use of land that has or would have a significant impact on at least two planning areas, [etc]”). The question of whether development or use of land would have a significant impact on two planning areas is a matter of planning judgment.

110. The obligation (see subsection (1)) is to co-operate in “maximising the effectiveness” with which plan documents can be prepared, including an obligation “to engage constructively [etc]” (subsection (2)). Deciding what ought to be done to maximise effectiveness and what measures of constructive engagement should be taken requires evaluative judgments to be made by the person subject to the duty regarding planning issues and use of limited resources available to them. The nature of the decisions to be taken indicates that a substantial margin of appreciation or discretion should be allowed by a court when reviewing those decisions.

111. The engagement required under subsection (2) includes, in particular, “considering” adoption of joint planning approaches (subsection (6)). Again, the nature of the issue and the statutory language indicate that this is a matter for the judgment of the relevant planning authority, with a substantial margin of appreciation or discretion for the authority.

112. WCC was required to have regard to the guidance about co-operative working given in the NPPF: subsection (7).

113. The limited nature of the role for the court in a case like the present is reinforced by the structure of the legislation in relation to review of compliance with the duty to co-operate under section 33A. The Inspector is charged with responsibility for making a judgment whether there has been compliance with the duty: section 20(5)(c) of the 2004 Act. His task is to consider whether “it would be reasonable to conclude” that there has been compliance with the duty: section 20(7)(b)(ii) and (7B)(b). A court dealing with a challenge under section 113 of the Act to the judgment of an inspector that there has been such compliance is therefore limited to review of whether the inspector could

rationally make the assessment that it would be reasonable to conclude that there had been compliance by a planning authority with this duty. It would undermine the review procedures in the Act, and the important function of an inspector on an independent examination, if on a challenge to a plan brought under section 113 the court sought to circumvent this structure by applying any more intrusive form of review in its own assessment of the underlying lawfulness of the conduct of the planning authority itself. A rationality standard is to be applied in relation to the decision made by the Inspector and in relation to the underlying decision made by WCC.”

36. In the subsequent case of *Trustees of the Barker Mill Estates v Test Valley Borough Council* [2017] PTSR 408 Holgate J endorsed and adopted the analysis of Sales J in *Zurich Assurance* (see paragraphs 55-57). Since the claimant places some reliance upon the conclusions of Holgate J in relation to the particular facts of that case it is necessary to set out Holgate J’s agreement in summary with Sales J, and then his analysis of the issues which arose in that case and how he resolved them. These points are dealt with in the following paragraphs of his judgment:

“58. In agreement with Sales J I consider that:—

(i) The question posed by section 20(7B)(b) of PCPA 2004 is a matter for the judgment of the Inspector;

(ii) The Court's role is limited to reviewing whether the Inspector could rationally make the assessment that

(ii) The Court's role is limited to reviewing whether the Inspector could rationally make the assessment that it would be “reasonable to conclude” that the LPA had complied with section 33A ;

(iii) It would undermine the structure of PCPA 2004 and the procedure it provides for review by an independent Inspector if, on a challenge made under section 113 , the Court sought to apply a more intrusive form of review in its assessment of the underlying lawfulness of the LPA's conduct or performance; form of review in its assessment of the underlying lawfulness of the LPA's conduct or performance;

59. The challenge under ground 2 is therefore directed to the Inspector's report, in particular paragraphs 10 to 14 where he stated:—

“10. On the first day of the Hearing a submission was made by a representor to the effect that the Council had failed in relation to the DtC [the duty to co-operate]. This was discussed in some detail at the Hearing, and in public correspondence between the representor, the Council and myself. The most important element of this submission was that the Council's identified affordable

housing need figure is 292 dwellings per annum (d.p.a.) (clarified by MM/5/1 ), with certain caveats, whereas the expected provision is 206 d.p.a. The Council put forward reasons for this position, but the DtC issue relates to the fact that the Council had not asked neighbouring authorities whether they could accommodate some or all of the identified shortfall.

11. There is nothing to suggest the extent to which any shortfall in affordable housing provision within Test Valley would lead to displaced demand affecting some or all of the eight adjoining authorities.

12. The objective of the DtC is to maximise the effectiveness of the plan making process. In this case the overall manner in which the Council has worked with other authorities, particularly but not exclusively in the southern part of the Borough, is impressive. In the light of their considerable experience, Council officers presented me with a very clear picture of the position of adjoining authorities in relation to affordable housing. To have made a formal request to adjoining authorities for assistance with affordable housing, when the Council knew full well what the answer would be, would not have been effective or productive.

13. In subsequent correspondence the representor also stated that there would be a shortfall in market housing, and that the DtC would additionally be triggered in this respect. However, as I conclude (below) that the RLP will meet the full OAN for market housing, this matter does not trigger the DtC.

14. The Council has clearly taken into account the wider strategic context and the interrelationships with neighbouring areas, particularly in terms of housing markets and employment patterns. I am satisfied that the Council has engaged constructively, actively and on an ongoing basis with relevant local authorities and organisations, and I conclude that the DtC has been met.

...

60. The Claimants submit that where an LPA cannot meet its own FOAN for affordable housing then it must “explore under the ambit of the duty to co-operate whether any unmet needs can be met within adjacent LPAs” (paragraph 68 of skeleton). The proposition is said to be based upon paragraphs 104 and 106 of the judgment of Hickinbottom J in *Gallagher* . But in fact the Judge did not determine any issue in relation to section 33A nor did he lay down the proposition for which the Claimants contend.

61. It is to be noted that the Claimants' proposition is limited in scope. This is not a case where non-compliance with section 33A is said to have occurred because the Defendant failed to address

the inclusion of a policy in its plan for meeting needs arising outside its area. The Claimants simply argue that TVBC should have “explored” with other LPAs the issue of whether the shortfall in meeting the FOAN for affordable housing in its area could be dealt with in their areas. In essence, this is the same complaint as that raised at the Examination, namely that TVBC failed to put this question to the other authorities.

62. The Claimants were not at all precise as to what the use of the term “explore” should be taken to mean, although it lies at the heart of the ground of complaint. By implication the Claimants recognise that TVBC was not in a position to complete other authorities to provide for TVBC's shortfall and that they might legitimately say that they were unable to assist. Here the word “explore” suggests obtaining sufficient information about affordable housing needs in the areas of other LPAs and their ability to satisfy their own needs and any additional needs from other areas. In the light of that information a plan-making authority could decide, as a matter of judgment, whether it would be worthwhile to pursue negotiations with one or more other authorities to assist with its shortfall.

63. In this case the Claimants made no attempt to show the Court that TVBC either lacked this information or that, in the light of the information it had, TVBC's judgment that there was no point in pursuing negotiations with other authorities on this point was irrational. In his reply, Mr Cahill QC confirmed that the only criticism of the Inspector's report is one of irrationality and is limited to the last sentence of paragraph 12, in which he had said that there had been no need for TVBC to make a “ formal request” to adjoining authorities when it knew full well what the answer would be. He also stated that no legal criticism is made of the penultimate sentence of paragraph 12 in which the Inspector said that TVBC's officers had given him a very clear picture of the position of adjoining authorities in relation to affordable housing.

64. In fact, paragraph 12 is a summary of what the Inspector had been told during the Examination. In inquiry document IN009 (dated 19 December 2014) the Inspector explained that the extent of cross-boundary working had been explained by TVBC not only in its “Duty to Co-operate Statement” but also in the Hearing sessions, including one devoted to affordable housing. TVBC had been actively engaged in the production of a number of informal strategies and evidence based studies with other authorities and stakeholders. The extent of the working with other authorities was described by the Inspector as “impressive”. It was from this information that he reached the judgment that TVBC's officers were “fully aware that other authorities would not be in a position to assist with any shortfall”. Plainly the

Inspector relied upon this information when writing paragraph 12 of his Report on the Examination.

65. When paragraph 12 of the Report is read properly in the context of the material which was before the Examination, the Inspector, in his review of TVBC's performance, was entitled to reach the conclusions that (i) they had obtained sufficient information from the cross-boundary work which had in fact taken place on whether adjoining authorities would be able to provide affordable housing to meet any part of needs arising within TVBC's area and that (ii) it would have been pointless to make a "formal request" for assistance in meeting TVBC's shortfall. It is impossible for the Court to treat to Inspector's conclusions as irrational and so ground 2 must be rejected."

37. In *R(on the application of St Albans City and District Council) v SSCLG and others* [2017] EWHC 1751 Sir Ross Cranston dealt with an application for judicial review in which it was contended that an Inspector's conclusion that the duty to cooperate had not been satisfied was unlawful. The factual circumstances of that case involved the claimant's argument that the Inspector had failed to properly take into account the polarised position or impasse which had emerged in relation to contentions between the claimant and the adjoining local planning authorities with respect to the housing market. Having accepted and endorsed the approach taken in *Zurich Assurance* and *Trustees of Barker Mills*, Sir Ross Cranston concluded that the reasons provided by the Inspector demonstrated that he was fully aware of the disagreement between the council and adjoining local planning authorities in relation to the definition of the housing market area and appreciated the issue. The judge was satisfied that the decision adequately reasoned the conclusions that the Inspector had reached. In paragraph 51 of the judgment Sir Ross Cranston went on to accept the defendant's submission "that once there is disagreement, I would add even fundamental disagreement, that is not an end of the duty to cooperate". He concluded that the duty to cooperate remained active and ongoing "even when discussions seemed to have hit the buffers". Whilst in reaching this conclusion he placed some reliance on a decision of Patterson J in *R(on the application of Central Bedfordshire Council) v SSCLG* [2015] EWHC 2167 (Admin), which the parties in the present case accepted could not be authoritative as it was a permission decision which did not contain a statement that it could be cited in accordance with the Practice Direction on the Citation of Authorities, 9 April 2001 and, furthermore, was overturned by the Court of Appeal in granting permission to appeal.. Nonetheless the observations of Sir Ross Cranston are in my judgment properly capable of being considered as free standing, relevant and reliable, bearing in mind the fact-sensitive nature of the judgment which has to be reached in each individual case in which the duty to cooperate is being examined, and taken in the context of the particular facts of the case he was considering.

#### Submissions and conclusions

38. On behalf of the claimant Ms Saira Kabir Sheikh QC advances the case on four grounds. The first ground is that the Inspector failed when reaching her conclusions to apply the margin of appreciation which ought to be afforded to the claimant pursuant to section 33A of the 2004 Act. It is Ms Sheikh's submission, based upon both the wording of the statute and also the decisions in *Zurich Insurance* and *Barker Mills*, that when

considering whether or not the claimant had discharged the duty to cooperate in preparing the plan the Inspector was required to afford a margin of appreciation to the claimant and she failed to do so. In particular Ms Sheikh relies upon the contention that the Inspector sought to substitute her own judgment for that of the claimant and adjoining authorities where, for instance, in paragraph 29 of her report she concludes that, notwithstanding the fact that the adjoining authorities indicated that there had been regular constructive and cooperative liaison, she was not satisfied that that had in fact taken place. The discarding of the opinions of adjoining authorities demonstrated that the Inspector had failed to afford the claimant the margin of appreciation to which it was entitled.

39. Moreover, Ms Sheikh disputes the contention that the Inspector applied the correct test in reaching her conclusions: whilst the Inspector made assertions about unmet housing need being met elsewhere outside the claimant's administrative area, in reality the claimant was fully aware from its engagement with neighbouring authorities that there was no possibility of unmet housing need being met elsewhere. The Inspector's approach, for instance in paragraph 37 of her report, demonstrates that the Inspector's focus was upon what a local planning authority might do in the event of unmet housing need arising and was not focused on the particular circumstances of the claimant and its own knowledge and judgment as to what might be expected from any dialogue with adjoining authorities. Effectively, the whole tenor of the Inspector's report reflects the substitution of her own judgment for that of the claimant, without affording the claimant the margin of appreciation to which they were entitled.
40. Ms Sheikh also contends that her approach to the statements of common ground illustrated a similar error. The statements of common ground illustrated the depth and extent of the claimant's engagement with adjoining authorities, and her assertion that these had been drafted too late to influence the plan misunderstood both her role and the proper approach to be taken to the duty to cooperate.
41. In response to these submissions Mr Richard Moules, on behalf of the defendant, submits that when the Inspector's report is read as a whole it is clear that she has applied the correct approach. She started from the proposition that the plan had been submitted by the claimant in what it considered to be a legally compliant and sound form. In paragraph 37 of her report she clearly applied the test of what it was "reasonable to expect" the claimant to have done in the circumstances which arose. Fundamentally, Mr Moules submits that the present case had little to do with the margin of appreciation, on the basis that the Inspector's judgment as to what the claimant had done demonstrated that in fact they had done nothing constructive to explore addressing unmet housing need at the appropriate time during the plan's preparation. The Inspector concluded that the claimant could reasonably have been expected to do something in the circumstances which arose when the extent of unmet need emerged, but in fact did nothing.
42. Moreover, Mr Moules maintains that the Inspector was entitled to scrutinise the assertions of the adjoining authorities and if she concluded that, having evaluated all of the available evidence, it was not "reasonable to conclude" that the duty to cooperate had been satisfied then she was entitled to reach the conclusion which she did. Further, in applying the statutory tests at paragraph 26 of the Framework, the Inspector needed to examine whether the claimant had taken reasonable steps to explore meeting its unmet housing need. In doing so the Inspector was not effectively adopting the

approach of asking what a hypothetical authority would have done but was rather discharging the statutory tests on the facts of this particular case. The undoubted existence of the margin of appreciation should not stand in the way or act as a disincentive to local planning authorities working together to help to solve difficult and controversial problems of, for instance, unmet housing needs where the authority areas are the subject of environmental constraints.

43. Turning to Ground 2, Ms Sheikh contends that in reaching her conclusions the Inspector failed to correctly interpret and apply the duty to cooperate and conflated it with the statutory requirement that the plan should be sound. Central to her submission is that the Inspector misdirected herself by working backwards from evidence which might go to the soundness of the plan to reach conclusions on whether or not the duty to cooperate had been discharged. She worked backwards from the existence of unmet need to reach a conclusion that there had been a failure to comply with the duty to cooperate. This confused and conflated the two issues of the duty to cooperate and soundness. The evidence of this error exists, for instance, in paragraphs 17 and 24 of the Inspector's report in which she focusses on the existence of unmet need and the failure to resolve that issue. Ms Sheikh submits that the reality was that at the stage that unmet need was clearly identified it was well known that it could not realistically be met elsewhere. In effect, the Inspector erroneously considered the duty to cooperate in the light of the unmet housing need, rather than examining the requirements of the duty to cooperate itself in order to understand whether it had been discharged. The issue of unmet need and whether the housing figures and delivery proposed by the SDLP were justified was an issue connected with soundness and not the duty to cooperate.
44. In response to these submissions Mr Moules contends, firstly, that the Inspector was careful to distinguish between the duty to cooperate and the requirements of soundness in the substance of her report. Secondly, Mr Moules submits that when the Inspector's decision is properly understood, it correctly distinguished between the duty to cooperate and soundness. The problem, as identified by the Inspector, did not lie in the existence of unmet housing need in and of itself but rather in the claimant's failure to engage with adjoining authorities constructively, actively and on an ongoing basis in order to consider an attempt to find a solution that that unmet housing need at the time when it emerged. The Inspector recognised, in particular in paragraph 39 of her report, that it may not be possible for the claimant's housing need to be met in full, but concluded that earlier and fuller proactive engagement might have made it "significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need". In truth, Mr Moules contends that the claimant highlights two paragraphs (paragraphs 17 and 24) which in fact exemplify the Inspector addressing and setting out the essence of the claimant's failure to engage in ongoing active and constructive engagement with the neighbouring authorities in relation to the strategic issue of unmet housing need, rather than confusing the questions arising under the duty to cooperate with those which arose in respect of soundness.
45. Turning to Ground 3, Ms Sheikh on behalf of the claimant submits that the Inspector failed to have regard to the available material evidence furnished by the claimant. The evidence demonstrated that the claimant was both aware that there would be an unmet need, but also as a result of its duty to cooperate discussions with adjoining authorities was aware that regardless of the scope of the unmet need neighbouring authorities would not be able to assist. This point is not grappled with, she submits, by the

Inspector, and, in particular, the Inspector fails to grapple with the extensive environmental constraints that each of the authorities have to work with. In addition, Ms Sheikh submits that the statements of common ground ought not to have been disregarded in the way the Inspector did by treating them as too late to influence the SDLP. In fact, that documentation reflected years of discussions between the authorities and was highly relevant to demonstrate that the duty to cooperate had been discharged. Further, the lack of a formal request for assistance from the claimant did not demonstrate non-compliance with the duty to cooperate: the reason that no formal request was made was because as a result of the exercise of the duty to cooperate the claimant was well aware that unmet need could not be met elsewhere.

46. In response to these submissions Mr Moules submits that, firstly, the Inspector addressed whether or not there had been discussion of meeting unmet need for a considerable time and concluded on the evidence, as she was entitled to, that there was no evidence to support the claimant's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities (see paragraph 35). Secondly, Mr Moules submits that the Inspector was clearly aware of the constraints under which both the claimant and the adjoining authorities operated: these were referred to at several points during the course of her report. Thirdly, the Inspector explained clearly her conclusion that the claimant had neither demonstrated that it had constructively and actively pursued solutions to the unmet housing need it had identified with its neighbours at the appropriate time during preparation of the plan, nor that cooperation with its neighbours was an impossibility in respect of meeting any of the unmet housing need arising. Fourthly, Mr Moules submits that, again, the Inspector clearly explained for good reason that the statements of common ground had arrived too late in the process to support the conclusion that the duty to cooperate had been complied with. Fifthly, the claimant's complaint in relation to the Inspector's view on the lack of the formal request to neighbouring authorities is submitted by Mr Moules to be simply another disagreement on behalf of the claimant with the Inspector's planning judgment that it was unreasonable for the claimant to do nothing by way of meaningful exploration of solutions to meet the identified housing need shortfall.
47. Finally, by way of Ground 4, Ms Sheikh submits that the Inspector failed to give adequate reasons for the claimant's failure to comply with the duty to cooperate or, alternatively, the Inspector's conclusion was irrational. In particular it is submitted that the Inspector failed to provide adequate reasons as to why weight was placed upon the claimant's failure to make a formal request for assistance earlier and further failed to adequately reason why she disregarded the evidence of neighbouring authorities in relation to the duty to cooperate, or why she suggested that the statements of common ground did not provide evidence of compliance to cooperate. In the light of the evidence the Inspector's conclusions were irrational.
48. In response to these submissions Mr Moules submits that the Inspector's conclusions on each of the issues relied upon were clear and entirely rational. As the Inspector explained, had formal requests for the adjoining authorities been made as soon as the full extent of the claimant's unmet housing need became apparent then it may have been possible through constructive engagement to achieve a more positive outcome and maximise the effectiveness of the plan (see paragraphs 37-39 of the Inspector's report). The Inspector's reasoning showed that the neighbouring authorities' views were taken

into account, but as the Inspector explains they could not allay the concerns that she had clearly identified. The statements of common ground were, for the reasons the Inspector gave, provided too late to furnish evidence of compliance with the duty to cooperate in relation to the unmet housing need identified. Finally, Mr Moules submits that it is unarguable that the Inspector's conclusion was irrational.

49. In forming conclusions in relation to these competing submissions it is necessary, in my view, firstly to analyse the substance of the legal issues which arise in relation to the duty to cooperate under section 33A of the 2004 Act. Thereafter, secondly, it is important in my view to be clear as to the nature of the decision which the Inspector reached and the specific basis for her conclusions.
50. As described in paragraph 33A(2)(a) the duty to cooperate, when it arises, requires the person who is under the duty "to engage constructively, actively and on an ongoing basis" in relation to the preparation of a development plan document (see paragraph 33(A)(3)(a)) "so far as relating to a strategic matter" (see paragraph 33A(3)(e)) to "maximise the effectiveness" of the activity of plan preparation. Whilst during the course of her submissions Ms Sheikh points out that activities were undertaken by the claimant in relation to a broad range of strategic issues concerned with infrastructure and wider environmental designations, and she relied upon the numerous strategic matters with which the claimants were concerned in preparing the SDLP, it is in my view clear that the duty to cooperate arises in relation to each and every strategic matter individually. There was, therefore, no error involved by the Inspector in the present case focussing upon one of those strategic matters in reaching her conclusions in respect of the duty to cooperate.
51. I accept the submission made by Ms Sheikh that discharging the duty to cooperate is not contingent upon securing a particular substantive outcome from the cooperation. That was a proposition which was not disputed by Mr Moules. I accept, however, his submission that the duty to cooperate is not simply a duty to have a dialogue or discussion. In order to be satisfied it requires the statutory qualities set out in section 33A(2)(a) to be demonstrated by the activities comprising the cooperation. As Sales J observed in paragraph 110 of *Zurich Assurance*, deciding what ought to be done to meet the qualities required by section 33a(1)(c)(2)(a) "requires evaluative judgments to be made by the person subject to the duty regarding the planning issues and use of limited resources available to them." As Sales J also observed, bearing in mind the nature of the decisions being taken a court reviewing the decision of an Inspector making a judgment in respect of whether there has been compliance with the duty will be limited to examining whether or not the Inspector reached a rational decision, and will afford the decision of the Inspector a substantial margin of appreciation or discretion. It is against the background of these principles that the submissions of the claimant fall to be evaluated.
52. The second issue is, as set out above, to be clear as to the nature of the decision which the Inspector reached. In that connection, in my judgment the submissions made by Mr Moules in relation to Ground 4 are plainly to be preferred. Having carefully examined the Inspector's conclusions they were, in my judgment, clearly expressed and set out in detail the reasons for the conclusions that she reached. I am unable to identify any defect in the reasoning of her report which sets out clearly and in full detail her conclusions and the reasons for them.

53. It is clear from the report that the conclusions of the Inspector were that the claimant became aware of the detailed extent of its unmet housing need after the Regulation 18 consultation which ceased on the 10 September 2018 (see paragraph 27 and paragraph 35). The first minutes of a duty to cooperate meeting referring to addressing unmet housing need in the claimant's area was on 13 March 2019, after the Regulation 19 consultation on the SDLP, and seven weeks prior to submission of the SDLP for examination (see paragraph 23). The minutes of the duty to cooperate meetings provided "no substantial evidence that the council sought assistance from its neighbours in meeting its unmet housing need" prior to the publication of the Regulation 19 version of the SDLP (see paragraph 24). The claimant did not request assistance from Tunbridge and Malling Borough Council during the course of Regulation 19 consultation on the Tonbridge and Malling Local Plan between 1 October and 19 November 2018 to assist with unmet housing need in the claimant's area (see paragraph 27), and only made formal request to ask whether or not Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council would assist in meeting the claimant's unmet housing need after the Regulation 19 consultation had been completed and just prior to submitting the plan for examination (see paragraphs 27 and 28). The statements of common ground were completed after the submission of the plan for examination and prepared too late to influence the content of the plans preparation (see paragraphs 32 and 33). Whilst the claimant contended that discussions had already indicated prior to the extent of unmet housing need emerging following the Regulation 18 consultation and further engagement was not undertaken because it had already been indicated that an unmet need of 600 dwellings could not be accommodated, the Inspector concluded that there was no evidence to support the assertion that discussions had already indicated an unmet need of 600 dwellings could not be accommodated (see paragraph 35).
54. Thus, the Inspector concluded in paragraph 37 of her report that it was reasonable to expect that the claimant would, after the extent of the unmet housing need emerging following the Regulation 18 consultation, have undertaken constructive engagement in an attempt to resolve the issue prior to the publication of the Regulation 19 version of the plan. Whilst that process may or may not have been fruitful, the Inspector observed that "it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place". The peer review process did not assist: the PAS workshop was undertaken at a very late stage the plan process and "if the engagement had occurred as soon as the council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome" (see paragraph 43). The visiting Inspector raised issues which were not adequately resolved before the plan was submitted (see paragraph 44).
55. From this distillation of the Inspector's conclusions and reasoning it is clear to see that there is no substance in the claimant's grounds. In my view it perhaps makes most sense to start with the claimant's Ground 2, the contention that the Inspector failed to properly interpret and apply the duty to cooperate and conflated it with the requirement for soundness. In my view there is no basis for this contention when the Inspector's conclusions and reasons are properly understood. Firstly, as to the application of the test it is clear from paragraph 37 that the Inspector directed herself to whether, in accordance with the requirements of section 20(7)(a)(ii), it was reasonable for her to conclude that the duty to cooperate had been complied with. She found that once the

extent of the unmet need emerged after completion of the Regulation 18 consultation on the SDLP, the claimant should have contacted its neighbouring authorities and engaged constructively in an attempt to resolve the issues arising from its unmet housing needs. Her conclusion that there was no communication, let alone engagement, in between the emergence of this issue and embarking upon a Regulation 19 consultation underpinned her conclusion that there had not been constructive, active and ongoing engagement in relation to that issue. It is clear from paragraphs 37 and 43, and indeed from the totality of her reasoning, that what she was scrutinising and assessing was not the identification of a particular solution for the strategic issue of unmet housing need, but rather the quality of the manner in which it had been addressed. Her conclusions were, based on her factual findings as to what in fact happened after the Regulation 18 consultation disclosed the extent of the unmet housing need, that no constructive and active engagement was undertaken at the time when it was required in advance of the Regulation 19 version of the SDLP being settled. These conclusions properly reflected the statutory requirements and the evidence which was before the Inspector and do not disclose any misdirection on her part, or confusion between the requirements of the duty to cooperate and the requirements of the soundness with respect to this strategic issue.

56. Turning to Ground 1 there is force in the submission made by Mr Moules that, in truth, this is a clear-cut case based on the findings that the Inspector reached. As set out above, the Inspector concluded (as she was entitled to on the evidence before her) that at the time when the strategic issue in relation to unmet housing need crystallised, there was no constructive, active or ongoing engagement and, indeed, the matter was not raised with neighbouring authorities until after the Regulation 19 consultation on the SDLP and at a very late stage in plan preparation. Requests made of neighbouring authorities on the 11 April 2019 post-dated the Regulation 19 consultation and were shortly prior to the plan being submitted. In those circumstances the Inspector was entitled to conclude that these discussions were not taking place at a time when they could properly inform and influence plan preparation and maximise the effectiveness of that activity. As the Inspector recorded in paragraph 37, she found, as she was entitled to, that had engagement occurred after the Regulation 18 consultation and prior to the Regulation 19 consultation “it might have resulted in a more positive outcome”. Further, as the Inspector recorded, the possibility that it may have led to the same outcome was nothing to the point. Effective, constructive and active engagement had not taken place at the time when it was required. By the time there was communication in respect of the issue it was too late.
57. Although the claimant stressed its belief that whenever called upon to do so neighbouring authorities would have refused to provide assistance, I am not satisfied that this provides any basis for concluding that the Inspector’s conclusions were irrational. Indeed, as she notes, Tunbridge Wells Borough Council noted in its written material that if the request to address the claimant’s unmet housing need had been made at any point prior to the submission of its comments on the Regulation 19 version of the plan then their response would have addressed the issue more fully. There was, therefore, evidence before the Inspector to support her judgment in this respect. In the light of these matters I am unable to accept that there is any substance in the claimant’s Ground 1. There is no justification for the suggestion that the Inspector failed to afford a margin of appreciation to the claimant in reaching her conclusions; the clear-cut nature of the conclusions which the Inspector reached were fully set out and ultimately

the Inspector was required by section 20 of the 2004 Act to reach conclusions in relation to the statutory test which she did.

58. Turning to the submissions in relation to Ground 3, I am unable to accept that the Inspector failed to have regard to the material which was available to her in reaching her conclusions. It is clear to me from the detail of the report that the Inspector had regard to all of the evidence that had been placed before her. The Inspector clearly addressed the detailed material in relation to the duty to cooperate meetings and the preparation of joint evidence. She also engaged with the existence of statements of common ground and the views of the neighbouring local authorities. She gave careful consideration to the peer review which had been undertaken and reflected on the responses from adjoining authorities to request they meet unmet housing need from the claimant and the environmental constraints under which the claimant had to operate. In my view the submissions advanced in respect of Ground 3 effectively amount to a disagreement with the Inspector on the conclusions which she ought to have forged based upon the material which was before her. Ultimately, the availability of this evidence did not dissuade the Inspector from reaching the conclusions which she did in respect of quality and timing of the engagement in the present case: the generality of the position presented by the claimant does not gainsay the detailed conclusions reached by the Inspector as to the nature of the duty to cooperate activities, or lack of them, at the critical point of time when the extent of nature of the unmet housing need emerged at the conclusion of the Regulation 18 consultation. In my view it is clear that the Inspector had careful regard to all of the material which was placed before her and reached conclusions which, I have already set out in respect of my views on Grounds 1 and 2, were lawful and appropriate.
59. I have already expressed my view as to the quality and nature of the reasons provided by the Inspector in respect of the examination. In my view her reasons were clear, full, detailed and justified. In addition, under Ground 4 it is contended that the conclusion which she reached was irrational. In my judgment there is no substance whatever in that contention. For the reasons which I have already given the Inspector's conclusions were clearly open to her and based upon a proper appreciation and application of the relevant statutory tests.
60. It follows that for all of the reasons set out above I am satisfied that there is no substance in any of the grounds upon which this claim is advanced and the claimant's case must be dismissed.



## Appeal Decision

Inquiry held on 9-12 December 2014

Site visit made on 12 December 2014

by **John Felgate BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 January 2015

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**Appeal Ref: APP/A1720/A/14/2220031**

**Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Village Green PLC against the decision of Fareham Borough Council.
  - The application Ref P/13/1121/OA, dated 20 December 2013, was refused by notice dated 11 March 2014.
  - The development proposed is "*erection of 37 dwellings together with associated access and parking for existing play area*".
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### DECISION

1. The appeal is allowed and planning permission is granted for the erection of 37 dwellings together with associated access, and parking for the existing play area, on land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick, Hampshire, in accordance with the terms of the application, Ref P/13/1121/OA, dated 20 December 2013, subject to the conditions set out in the attached schedule.

### PRELIMINARY MATTERS

2. The planning application seeks outline permission with all matters reserved except for access, which is proposed to be from Swanwick Lane, adjacent to the existing play area. The application is accompanied by an 'Indicative Layout' (Plan No PP1220-101-00, Revision P2), but in relation to all matters other than access, that plan is purely illustrative.
3. The Council's decision notice listed four refusal reasons (RRs). RR2 related to affordable housing and ecological mitigation. Since then however, the appellants have entered into a legal undertaking which provides for ecological mitigation by way of a financial contribution. And with regard to the affordable housing, the Council now accepts that this could be secured by condition. RR2 was therefore not pursued at the inquiry.
4. RR3 related to noise. Subsequently, the appellants have submitted a noise survey report. In the light of this report, it is now agreed that any issues relating to this matter could also be deal with by condition.
5. RR4 contained a list of the submitted plans. The Council now accepts that since this did not in fact state any reasons for objection, it should not have

appeared as an RR. The only one of the original refusal reasons that remains at issue between the parties is therefore RR1.

6. As well as dealing with ecological mitigation, the legal undertaking provides for the implementation of a landscaping scheme and a woodland management plan, and the setting up of a management company with responsibility for the upkeep and maintenance of the landscape and woodland areas within the proposed development.

## **PLANNING POLICY BACKGROUND**

### **The development plan**

#### *The Fareham Borough Local Plan (the FBLP), adopted March 2000*

7. The FBLP was designed to accord with the former Hampshire Structure Plan Review. Its intended plan period was 1999-2006. In 2007, a large number of the FBLP's policies were saved by a direction from the Secretary of State. The majority of those have since been replaced by the 2011 Core Strategy, but some have continuing effect.
8. Saved Policy DG4, which applies throughout the District, states that development will be permitted, provided that various requirements are met. These include that proposals should not detract from the natural landform, and should respect inward and outward views.
9. On the proposals map, the appeal site is included in an area designated as countryside.

#### *The Fareham Core Strategy (FCS), adopted August 2011*

10. The FCS has a plan period of 2006-26. It was intended to conform with the regional strategy contained in the South-East Plan (the SEP), approved in May 2009. It was also prepared in the context of the then-emerging South Hampshire Strategy (the SHS), a non-statutory sub-regional plan by the Partnership for Urban South Hampshire (PUSH), a consortium of 11 local authorities<sup>1</sup>.
11. Policy CS6 sets out the development strategy, which is to focus new development in various specified locations. One of these is the Western Wards, which includes Lower Swanwick. Priority is to be given to the re-use of previously developed land within defined settlement boundaries<sup>2</sup>. Policy CS9 sets out further criteria for development in the Western Wards, which include protecting the setting of the existing settlements.
12. Outside defined settlement boundaries, Policy CS14 states that development will be strictly controlled, to protect the landscape character, appearance and function of the countryside and coastline. In coastal locations, the policy seeks to protect the special character of the coast, when viewed from land or water.
13. Policy CS17 seeks to encourage good design which responds positively to the key characteristics of the area, including its landscape.

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<sup>1</sup> The SHS later became informally adopted by the partnership authorities in October 2012

<sup>2</sup> The FCS does not include any new proposals map of its own. The plan is accompanied by an 'interactive proposals map', but this is stated not to form part of the adopted plan itself. In the absence of any other indication, it appears that references in the FCS to 'defined settlement boundaries' relate to the boundaries shown on the proposals map of the FBLP. This interpretation is not disputed in the present appeal.

## **Emerging plans**

*The draft Development Sites and Policies DPD (the DSP), submitted June 2014*

14. The DSP is intended to provide for the development requirements identified in the FCS up to 2026, and also the increased levels of housing and employment proposed over the same period in the SHS. The DSP covers the whole of the District except for the proposed new community of Welborne.
15. On the DSP's proposals map, the appeal site forms part of an 'area outside of defined settlement boundaries'. In such areas, draft Policy DSP7 proposes a presumption against new residential development.
16. At the time of writing this decision, the draft DSP has completed the hearing stage of its public examination, and is awaiting the Inspector's report. Until then, the plan remains subject to unresolved objections in respect of the policies and designations relevant to the present appeal. As such, it carries limited weight.

*The draft Welborne Plan (the WP), submitted June 2014)*

17. The draft WP is an area action plan which sets out policies and proposals for the development of the new settlement, over a period running to 2036. At present, the WP has reached the same stage as the DSP, and is awaiting the Inspector's report. In so far as the WP is relevant to the present appeal, it is subject to unresolved objections, and thus its weight is limited.

## **National policy and guidance**

*The National Planning Policy Framework (the NPPF)*

18. The NPPF states at paragraph 6 that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 9 states that sustainable development involves seeking positive improvements in the quality of the environment and in people's quality of life; amongst other things, this includes widening the choice of high quality homes. Paragraph 14 states that there is a presumption in favour of sustainable development.
19. Paragraph 17 sets out core planning principles. These include proactively driving and supporting sustainable economic development to deliver the homes and other development that the country needs. Every effort should be made objectively to identify and then meet those needs, and to respond positively to opportunities for growth. The core principles also include recognising the intrinsic character and beauty of the countryside, conserving and enhancing the natural environment, and focusing development in sustainable locations.
20. At paragraph 47, the NPPF seeks to boost the supply of housing significantly. Local plans should aim to meet the full, objectively assessed need for market and affordable housing, as far as is consistent with other NPPF policies. Paragraph 49 states that policies for the supply of housing should not be considered up to date if a 5-year supply of deliverable housing sites cannot be demonstrated.
21. Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes. Paragraph 114 seeks to maintain the character of the undeveloped coast and its distinctive landscapes.

22. Paragraphs 186 and 187 requires that all planning decisions should be approached positively, by looking for solutions rather than problems, and that applications for sustainable development should be approved where possible.

*Planning Practice Guidance (PPG)*

23. The PPG provides further guidance on the policies in the NPPF. Paragraph 8-001 makes it clear that the NPPF's aims for the natural environment are not limited only to areas that are formally designated. Sections 2a and 3 contain more detailed advice on assessing housing needs and land availability, to which I will refer further below.

**MAIN ISSUES**

24. In the light of the matters set out above, and all of the submissions before me, both oral and written, it seems to me that the main issues in the appeal are:
- Whether it can be demonstrated that the District has a 5-year supply of land for housing development, to satisfy the requirements of the NPPF;
  - And the proposed development's effects on the character and appearance of the area.

**REASONS FOR DECISION**

**Housing land supply**

25. The Council claims a housing land supply of over 13 years. The appellants contend that the true figure is only just over 3 years. The divergence results firstly from a fundamental difference as to the size of the requirement that is to be met, and also from various other smaller, but significant differences in both methodology and assumptions. I will deal with each of these differences below.
26. The Council's land supply calculations are based on meeting the requirements in FCS Policy CS2, plus a small uplift reflecting the additional requirements suggested in the 2012 SHS. The appellants accept that on this basis a 5-year supply can be demonstrated, but they contend that the FCS/SHS figures are the wrong basis for the calculation.
27. The appellants' own calculations are based on the housing need projections in the Strategic Housing Market Assessment (SHMA) report for South Hampshire, published in January 2014. The Council, whilst disputing the use of the SHMA figures over the FCS, maintains that a 5-year supply can be demonstrated on this basis too.

*The Council's preferred housing requirement - based on FCS Policy CS2*

28. The PPG advises that the starting point for assessing the 5-year land supply should be the housing requirement figure in an up-to-date adopted local plan, and that considerable weight should be given to such a figure (paragraph 3-030). In the case of Fareham, the FCS is an adopted plan, and is only a little over 3 years old since its adoption. In such circumstances, it might often be unnecessary to look any further.

29. However, the PPG goes on to make it clear that this is not always the case:

*"(Considerable weight should be given to the housing requirement figures in adopted local plans) ...unless significant new evidence comes to light. It should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs.*

*Where evidence in local plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered."*<sup>3</sup>

30. In the present case, the FCS's housing requirement was directly derived from the now-revoked SEP. That plan was itself based upon an earlier version of the SHS, approved by the member authorities as long ago as 2005, which in turn was based on evidence necessarily dating back to before that time. Having regard to the PPG advice therefore, it seems to me that the FCS appears to be an example of the kind of local plan that is envisaged as being potentially out-of-date: that is, one where the evidence base dates from long ago, and where circumstances have changed so that the plan may not now adequately reflect current needs.
31. Furthermore, the FCS pre-dates the NPPF. As already noted, the NPPF places emphasis on ensuring that local plans set out to meet the full objectively assessed need (OAN) for housing, as far as is consistent with other relevant policies. This is a significant change compared to the previous national policy in Planning Policy Statement 3 (PPS3), which was in place at the time when the FCS was adopted. Although the relevant part of the NPPF (paragraph 47) is couched in terms that relate principally to plan-making, the Courts have determined that the same principles should be assumed to apply equally in decision-making, including development control decisions<sup>4</sup>. In the Borough of Fareham, the Council accepts that the FCS was not informed by any assessment of full OAN, and neither does it attempt to explore how far the OAN could be met. It follows that, in respect of matters relating to housing needs and targets, the policies of the FCS cannot be said to be consistent with the approach advocated in the NPPF. Paragraph 215 of the latter makes clear that in such cases, development plan policies may carry less weight relative to national policy and other considerations.
32. It is true that the Council's land supply calculations are not reliant solely on the FCS, because they also take account of the 2012 SHS, which is a more recent document, based on data that is more up to date than the FCS. But the SHS, like the FCS, is not derived from any assessment of full OAN, and does not address the question of what is the OAN, or whether it can be met. In the absence of knowing the full OAN, it seems to me that the 5-year supply exercise cannot serve its intended purpose. Consequently, merely adding an SHS element onto the Policy CS2 housing requirement does not overcome the fundamental shortcomings of the FCS itself, or those of any land supply calculations based on it.
33. I therefore conclude that the weight that can be given to the Council's calculations, based on the FCS and the SHS, is limited. This being so, it seems to me that the next step must be to look at any other available evidence of housing needs, and to assess whether, for the purposes of this appeal, this is likely to provide a better guide to OAN.

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<sup>3</sup> PPG 3-030 (emphasis added)

<sup>4</sup> Gallagher Homes Ltd and Lioncourt Homes Ltd v Solihull MBC: [2014] EWHC 1283 (Admin)

*The alternative housing requirement - based on OAN*

34. I therefore turn to the appellants' proposed alternative, of using the figures from the 2014 SHMA report. In considering the SHMA, I have taken particular account of the letter on this subject from the Minister of State for Housing and Planning, issued on 19 December 2014, after the close of the inquiry, and the appeal parties' comments on the contents of that letter.
35. In the case of the South Hampshire SHMA, there can be no doubt that the report's intention and main purpose is to quantify the OAN, for the sub-region as a whole, and for its constituent housing market areas (HMAs) and districts. This aim is made clear, both in the report's own introduction, and in the officers' report which accompanied it to the PUSH joint committee, in January 2014. The SHMA report examines in considerable detail the various alternative demographic projections, market signals, economic trends, and the needs of different groups, including the need for affordable housing. Having done so, it presents a number of housing need scenarios, reflecting a range of differing assumptions. Without question, this is a substantial body of work, and one that appears both comprehensive and thorough.
36. The SHMA report pre-dated the coming into force of the PPG. However, it was prepared in the light of the earlier draft version, and against the established background of the NPPF, and its methodology appears broadly consistent with the subsequent guidance. The SHMA has yet to be fully tested, but nonetheless, it has evidently been accepted by the PUSH authorities, including Fareham, as a basis for the forthcoming review of the SHS and subsequent local plans. Moreover, the very fact that the SHMA has been commissioned jointly, on behalf of all the South Hampshire authorities, gives it added weight.
37. Certainly, the SHMA figures have not been moderated to allow for any constraints, or to take account of any opportunities for cross-boundary co-operation. However, these are not necessary for the purposes of defining the OAN. A good deal more work will be required before the SHMA figures can be translated into proposed housing policy targets. But that does not prevent those figures from being used in a 5-year land supply calculation now, because this is exactly what the PPG advises in a situation where the adopted plan has become out of date. At the inquiry, the Council's witness agreed that the SHMA represents the best and most up-to-date evidence of OAN currently available, and I see no reason to disagree with that view.
38. For these reasons, I conclude that the 2014 South Hampshire SHMA appears to represent a respectable and credible picture of the OAN for housing in Fareham. As such, it seems more likely to present a realistic picture of housing need than the FCS. Of these two options therefore, it seems to me that the SHMA provides the more suitable basis for a 5-year land supply calculation at the present time.

*The OAN figure*

39. Although the SHMA covers a wide range of alternative scenarios, there is agreement between the Council and the appellants that, if the SHMA-based approach is used, then the most appropriate set of figures for the purposes of this appeal is that referred to as 'PROJ2 - Midpoint Headship'<sup>5</sup>. This is

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<sup>5</sup> As set out in the SHMA report at Appendix U, Table 19 (on p51 of the Appendices)

essentially a demographic-based projection of housing need linked to the ONS sub-national population figures, with an adjustment for future changes in migration, and incorporating a household formation rate mid-way between those of the 2008-based and 2011-based DCLG projections. On this basis, Fareham's OAN, over the period 2011-36, would be 395 dwellings per annum.

40. Despite this measure of agreement, some of the evidence presented at the inquiry still questions whether 395 p.a. is high enough, having regard to the level of need in the affordable housing sector, and the need to avoid restricting economic growth. Even the Council's own witness admitted that economic trends were more likely to push the OAN up from that figure rather than down, and that on any basis, the full OAN was unlikely to be less than 395 p.a. However, it is not the function of this appeal to attempt to determine the future level of housing required in Fareham. The reason for exploring these matters is simply to choose the most appropriate figure for testing the 5-year supply at this point in time. None of the evidence identifies any other specific figure within the SHMA as being preferable to 395 dwellings per annum.
41. In passing, I note the Council's point that just because 395 p.a. is the average across the whole of the SHMA's 25-year period, that does not necessarily mean that the annual rate should be constant throughout. This may be so, but again, there is no specific evidence to support any alternative phasing. In the light of all the evidence before me, I conclude that 395 dwellings p.a. is a reasonably robust basis on which to proceed.
42. On this basis therefore, 5 years' worth of the annual OAN would be 1,975 dwellings. With the addition of a 5% buffer, which is not disputed, the overall 5-year requirement becomes 2,074 units<sup>6</sup>.

*The Council's suggested adjustment for over-delivery in previous years*

43. This requirement of 2,074 exceeds the Council's claimed supply of 1,926 dwellings<sup>7</sup>. However, the Council argues that the requirement should be reduced because, during the period 2006-14, housing completions exceeded the requirement in Policy CS2 by 401 units.
44. In putting forward this argument, the Council relies on paragraph 3-036 of the PPG, which states:
- "In assessing need, consideration may be given to evidence that a Council has delivered over and above its housing needs". (3-036)*
- In the light of this advice, the Council's case is essentially that this means that the past 'overprovision' should be deducted from the requirement for the next 5-year period, in full, irrespective of whether that requirement figure is based on the FCS or the SHMA.
45. I have considered this argument carefully. However, the PPG advice relates specifically to a situation where housing delivery has exceeded the area's housing needs, rather than a policy requirement. In this case, for the reasons explained above, I have come to the view that the Borough's housing needs are now more accurately expressed in the SHMA projections than in the FCS.

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<sup>6</sup> In the parties' evidence this is shown as 2,075, due to rounding the buffer from 19.75 to 20 units for each individual year

<sup>7</sup> As amended by Mr Home in oral evidence, from the figure of 1,876 which appears in the statement of common ground

Measured against the SHMA figure of 395 units per annum, there has been no over-provision or over-delivery.

46. I appreciate that the SHMA was only published in January 2014. But it relates to a period that started from April 2011, and it is therefore logical to take account of the housing needs that have arisen over the whole of that period. I fully accept that during 2011-14, the Council could not have been expected to meet a need which it was not aware of at the time, but that is not the point here<sup>8</sup>. With the benefit of the information now available, what was previously seen as an over-delivery against the FCS requirement during those three years, can now be seen to have been in reality a slight under-delivery compared to the level of actual need.
47. For the years 2006-11, there is no assessment of OAN. Housing completions in that period exceeded the relevant policy requirement in the FCS, but that does not mean that they exceeded the need. And in any event, this period prior to 2011 is now somewhat historic. I appreciate that 2006 was the start of the FCS period, but now that the FCS is no longer the best reference point for future housing needs, it becomes questionable whether housing completions from before 2011 have any continuing relevance.
48. Furthermore, even if I were to take a different view on these matters, so that the 401 dwellings over-delivery against the FCS were to be deducted from the SHMA-based requirement as suggested, it is far from clear why the whole of the 401 should be offset against the needs of just the next 5 years. I appreciate that this would mirror the 'Sedgefield method', but that approach is normally used where the past performance has been one of under-provision, and in that kind of situation there is consequently a clear imperative to achieve a rapid increase in the rate of delivery. In the reverse situation, as here, there is no such imperative. Arguably, the effect would be a sharp reduction, which would be at odds with the NPPF's aims to maintain continuity of supply and boost overall provision. The Council has presented no cogent rationale for this approach.
49. The PPG advice referred to above allows for consideration of the effects of past over-delivery, but does not specify what action should then be taken. It may be that in some circumstances an adjustment to the requirement for future years would be justified, but here, for the reasons that I have explained, that is not the case. I can see nothing in the PPG which sanctions the approach now proposed by the Council in deducting 401 units from the requirement side of the 5-year supply calculation.
50. I therefore conclude that no adjustment should be made in respect of the past over-delivery against the FCS requirement.

*The supply side: Welborne*

51. The Council anticipates 500 completions, within the 5-year period, at the proposed new settlement of Welborne. This is supported by the planning and development programme agreed with the scheme's promoters and other relevant agencies, which indicates work starting on site in March 2016, and the first 120 dwellings being completed by March 2017. The Council acknowledges

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<sup>8</sup> As noted at the inquiry, this argument might be relevant in other circumstances, such as where the point at issue relates to whether there has been 'persistent under-delivery' for the purposes of the NPPF buffer; but the issue here is distinct from that type of assessment

- that this programme is both challenging and ambitious, but regards it as achievable.
52. However, the planned scheme is for a very large development, amounting to some 6,500 dwellings overall, plus employment, retail and other land uses. In terms of the practicalities of development, the site is completely undeveloped land, and major new infrastructure works of all kinds will be needed. A connection to the M27 is required, involving a new junction and slip roads. Developer partners, to take the lead in house-building and infrastructure works, have not yet been identified. Some of the land is not yet within the control of the current promoters, and the possible need to use compulsory purchase powers has not been ruled out. Although the Council maintains that the scheme will be financially viable, it admits that viability has been identified as a significant issue, and remains under review.
53. In terms of its planning status, although the general location of the development has been identified for many years, the formal allocation and specific site boundaries remain to be confirmed in the Welborne Plan, which is still under examination. No planning permission exists, nor has an application been made. Any application is likely to be subject to an environmental assessment, for which some of the necessary survey work will be limited as to the time of year. Some parts of the site apparently have protected status under European legislation, and a mitigation strategy may need to be agreed with Natural England before an application can be considered. There is no clear evidence as to how much of this work has already been done. I have no reason to doubt that ultimately the hurdles can be overcome, but that does not mean that they can be overcome quickly.
54. I note the Council's suggestion that, if necessary, a first phase of 500 dwellings could be brought forward as a stand-alone scheme, in advance of the new motorway junction and other new facilities. But there is no proper evidence regarding the feasibility of this option, or its effects on the development programme. The Welborne Plan clearly seeks a comprehensive approach, as set out in draft Policy WEL4.
55. The NPPF's test for inclusion in the 5-year supply includes the requirement that sites should have a realistic prospect of delivering houses within that timescale. At the inquiry the appellants' witness accepted that there was a possibility of up to 50 units coming forward within the 5-year period, although no more than that. I do not disagree with that assessment. But a mere possibility is not the same as a realistic prospect.
56. There can be no doubting the amount of work that has already gone into the Welborne scheme, or the commitment of all the parties involved. However, it is equally clear that there is still a long way to go before any houses can start to be built. For a development of this scale, with no planning permission or current application, nor yet even a detailed site allocation, five years is not a long time. From the evidence presented, it seems to me that the Council's development programme for Welborne relies at each stage on the absolute minimum timescales, or less. That approach may have its merits in some other context, but for the purposes of assessing the 5-year supply, it lacks flexibility. For this purpose, it would be more realistic in my view to assume that the development is likely to come forward in a slightly longer timescale, pushing the first completions beyond the 5-year period.

57. I conclude that the Council has failed to show a realistic prospect that development at Welborne is likely to contribute to the 5-year supply. The site therefore cannot be regarded as deliverable at this stage, in terms of the NPPF requirement. This reduces the Council's claimed supply by 500, to a maximum of 1,426 units.

*The supply side: other disputed matters*

58. A number of other sites in the Council's supply, totalling 202 units, are disputed by the appellants. I appreciate that some of these do not yet have planning permission. However, the information that the Council has provided indicates that the sites are likely to come forward within the requisite period. Some are proposed allocations in the draft DSP, which remain to be considered, but I am not aware of any objections to the principle of development on any of these sites. Some of the sites have other issues to be addressed, relating to access, trees and other detailed matters, but there is no suggestion that these are likely to be insoluble. None are so large that they would require more than five years to complete. In all of these cases, there is sufficient evidence to justify treating these sites as deliverable.
59. The Council's supply figures also include a windfall allowance of 100 dwellings across the 5-year period. I accept that this may involve a risk of some overlap with sites that are counted in other categories. But on the other hand, the Council's supply does not count identified sites of less than five units, including those with permission, which total 139 units. The Council suggests that, for the purposes of this appeal, these two figures are close enough to offset each other. In the interests of avoiding unnecessary complexity, I agree.
60. I therefore make no further adjustment to the Council's supply figure in response to the disputed sites or the windfall allowance. But in any event, in the light of the conclusions that I have already reached above, these matters do not affect the final outcome of the land supply calculation.

*Conclusions on housing land supply*

61. From the above, I conclude that the 5-year requirement, based on the best evidence of the OAN, should be 2,074 dwellings. This requirement should not be adjusted to take account of over-delivery prior to April 2014. Against this, the Council's maximum claimed supply is only 1,926 dwellings. The supply must therefore be less than the minimum 5 years required by the NPPF.
62. In addition, the Council's figure over-states the supply, by including 500 units at Welborne, which should not yet be counted as deliverable within the relevant 5-year period. When these are deducted, the realistically deliverable supply becomes 1,426 units. This amounts to only around 3.4 years.
63. Although the DSP and WP are at the examination stage, there is no evidence to suggest that the adoption of those plans in the near future would significantly change the housing supply situation from that considered at this inquiry. All in all, I conclude that a 5-year supply has not been demonstrated.
64. In the light of this finding, NPPF paragraph 49 requires that any relevant policies for the supply of housing be treated as out-of-date. For the purposes of the present appeal, it is not disputed that these include Policy CS14, in so far as the latter provides for settlement boundaries, and seeks to restrict housing development anywhere outside them. Accordingly, although the appeal site is

outside the boundary of Lower Swanwick, the resulting in-principle conflict with Policy CS14 carries relatively little weight.

65. In addition, the lack of a 5-year supply also means that added weight should be given to the benefits of providing housing to meet local needs.

### **Effects on the area's character and appearance**

#### *Effects on the character and appearance of the countryside*

66. In policy terms, the countryside is defined by the FBLP proposals map. On that map, the settlement of Lower Swanwick appears separated from the River Hamble by a continuous swathe of countryside, coloured green, and the appeal site is included in that area. Based on the proposals map, the loss of the appeal site would bring the urban area closer to the river, reducing the remaining countryside at that point to little more than a narrow strip along the water's edge. However, that is an impression conveyed by a map produced for a particular purpose. As its name suggests, the proposals map is concerned with policies and the control of development in the future; it is not necessarily intended to depict what exists now, nor can it be definitive in that respect. And in any event, for the reasons explained earlier, the settlement boundaries currently carry reduced weight, due to the lack of a demonstrated housing supply. For the purposes of this appeal therefore, it seems to me that any assessment of the appeal site's contribution to the countryside cannot usefully be done simply by reference to the FBLP proposals map. Rather, such an assessment should be based on what is seen on the ground.
67. The appeal site comprises an undeveloped grass paddock, currently used for grazing horses. To that extent, it might be arguable that the site has some resemblance to open countryside. However, the site lies at the junction of Lower Swanwick's two main roads, Bridge Road (the A27) and Swanwick Lane, which is effectively the settlement's centre. On its south-eastern and north-eastern sides, the site abuts existing residential areas. Adjacent to Swanwick Lane there is also a children's play area. To the south-west and north-west, fronting the river, is an extensive area of boat yards, workshops, moorings and related development, plus The Navigator pub and its car park. The appeal site is thus surrounded on all sides by urban land uses and built development, and at no point does it abut or connect with any other undeveloped or un-urbanised land. Consequently, notwithstanding its designation as countryside, what is seen on the ground amounts to no more than a relatively small, self-contained patch of vacant land, wholly enveloped within the built-up area.
68. How the site looks in reality is therefore quite different from the impression gained from the proposals map. To a large extent, this difference is explained by the treatment of the boatyards which encircle the appeal site on two sides. On the proposals map these are included in the countryside, thus creating the apparent connection between the appeal site and the river, and thence to the more open countryside beyond. I take no issue with this approach in terms of the policies that this implies for the yards themselves. But in terms of their effect on how the appeal site is perceived, the reality is that the boatyards comprise mainly large-scale, industrial-style buildings and a large expanse of hardstanding. Visually, these appear as an integral part of Lower Swanwick's built-up area. As such, their effect is not to link the appeal site to the river and

countryside, but rather to separate it from those, and to enclose it within the settlement.

69. In addition, the Swanwick Marina site, which includes the greater part of this boatyard area, has planning permission for redevelopment, including a pavilion building of up to 3 storeys, with retail units, bar and restaurant facilities, plus new workshops and offices, and 49 dwellings. The effect of that scheme, it seems to me, can only be to reinforce the urban character of the marina/boatyards area, further consolidating the settlement pattern and the appeal site's sense of containment within the urban area.
70. Similarly, to the north of the appeal site, the settlement boundary excludes some of the residential properties at Green Lane, suggesting a connection between the appeal site and the countryside beyond. However, as I saw on my visit, Green Lane is entirely residential in character, and functionally is fully part of the settlement of Lower Swanwick. Whilst the excluded properties are relatively low-density, a number such as 'Highfield' and 'Genesta' have been extended or replaced, becoming more prominent as a result. Consequently the Green Lane residential area is a highly visible part of the backdrop to the appeal site. Again, I do not mean to question the settlement boundary itself, as far as it relates to the Green Lane area, or the policies to be applied there. But in relation to the appeal site, the presence of residential development along the full length of its north-eastern boundary contributes to the impression of a site encircled by existing development, and reinforces the site's visual containment within the settlement.
71. This impression of containment is increased yet further by the dense woodland belt that runs along the appeal site's north-western boundary, partly within the site itself and partly on adjoining land. Some of the trees in this belt result from the additional planting that was carried out a few years ago. I note the comments made at the inquiry as to the possible motive for that planting, but this has no relevance to the planning merits of the site or the proposed development. To my mind, the tree belt has an attractive, naturalistic appearance, and continues the line which is already established along the top of the river bank further to the north. Its effect is to further reinforce the site's separation from the river, and its association with the built-up area.
72. I note the contents of the 1996 Landscape Character Assessment (LCA)<sup>9</sup>. That report found that the appeal site had 'strong visual links with the river and boat-related activities on the south side of the road'. That may have been so then, and indeed might still be so. But the boat-related activities referred to must presumably have been those in and around the boatyards, and for the reasons already given, my view is that that area has more affinity with the built-up area than the countryside. In any event, I can see nothing in this comment that could be said to endorse the view that the appeal site formed part of the countryside, either then or now. Neither is there any support for that view in the 2012 LCA<sup>10</sup>; indeed that report includes the appeal site in the urban area.
73. There are mid-range and longer views of the site from the A27 river bridge, and the railway bridge, and from Lands End Road on the opposite bank. But from all of these viewpoints, the site is framed by buildings and urban land

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<sup>9</sup> Fareham Borough Landscape Assessment : Scott Wilson Resource Consultants, May 1996

<sup>10</sup> The Hamble Valley Integrated Character Assessment : Hampshire County Council, May 2012

uses on all sides. Indeed, in respect of the view from Lands End Road, the Council made the point more than once at the inquiry, that the appeal site is the only piece of green space or open land that is visible. In addition, in all of these views, the site is partially screened by the tree belt or boatyard buildings. In none of them is the appeal site a main focus or a key element of the view. No other significant public viewpoints have been identified, other than from the roads immediately adjacent to the site itself. In my opinion all of these available viewpoints merely serve to reaffirm my earlier judgement, that the site's setting and context is formed primarily by the built-up area of Lower Swanwick.

74. In these circumstances, I conclude that the appeal site, in its undeveloped state, contributes nothing of any significance to the character or appearance of the countryside. It follows from this that, whatever visual impact the development might have, that impact would not be likely to significantly affect the countryside.

*Effects on the character and appearance of Lower Swanwick - loss of openness*

75. Seen from within Lower Swanwick, the appeal site appears essentially as an open, grassed field, sloping towards the A27. There is an attractive, medium-sized native poplar tree in one corner, at the Swanwick Lane junction, and the woodland belt on the opposite boundary, but there is no suggestion that the proposed development would put these at risk. In all other respects, the site is featureless and unremarkable.
76. If the site were developed as proposed, its present openness would be lost. However, as far as I am aware, the site has never been formally identified as an important open space, or any similar designation based on its townscape value or any contribution to the character or appearance of the settlement. Bearing in mind the other planning considerations discussed above, and especially the urban nature of the location, and the unmet need for housing, in these circumstances the loss of openness on its own is not a compelling objection.
77. Development on the lower part of the site could potentially obstruct views towards the waterfront from Swanwick Lane and the play area. Although the river itself is not visible from here, its presence is signalled by the sight of the many boat masts which extend above the roofs of the boatyard buildings, and I can appreciate why that sight would be missed by residents. But that consideration alone is not overriding. The site is not in a conservation area, nor would the proposed development appear to affect any views into or out of any such areas. The view from Swanwick Lane was not identified as a consideration in the design officer's pre-application comments, or in the planning officer's report, nor in the refusal reasons. Nor was it identified in either of the relevant LCAs. There is also no evidence that this was seen as an issue in the Council's earlier decision on the Swanwick Marina scheme, which seems likely to have a greater impact on the same view. Consequently, I am not convinced that the view from Swanwick Lane is such an important planning consideration as to outweigh the other matters that I have identified.
78. And in any event, the existing views need not be lost altogether, because layout and design are reserved matters. If the Council regards the views from Swanwick Lane as a priority issue, there seems no reason why the height and disposition of the buildings could not be designed to take this into account, by

creating gaps and preserving lines of sight where necessary. The current illustrative layout does not do this, but that plan is not binding, either on the Council or a future developer. Development on the remainder of the site would have little or no impact in terms of views towards the river. Given the size of the site as a whole, and the lack of constraints in most other respects, I see no reason why an acceptable alternative scheme could not be designed which takes account of the relevant viewpoints from within Lower Swanwick.

79. I also note the other points made in support of the retention of some openness at the site's southern corner, to create a landscaped area around the road junction and the poplar tree. I agree that this could well be an attractive approach, and this might be one possible way of producing the urban design focus that the 1996 LCA saw a need for here. But there is no reason why this should be the only way. In any event, for the same reasons as above, an outline permission based on the present application would not prevent this or any other approach from being followed at the reserved matters stage.
80. And furthermore, looking at the site as a whole, it seems to me that at that stage there would be the opportunity to seek to secure a high-quality scheme which could make better use of the land than at present, and which could enhance the urban townscape at this potentially important focal point. In the present outline application there is no guarantee that this opportunity would be realised, but the outcome would be at least partly in the Council's hands.
81. For these reasons, I have come to the view that the loss of the appeal site in its undeveloped state would not have any unacceptable adverse impact on the character or appearance of Lower Swanwick, and indeed could prove beneficial.

*Effects on Lower Swanwick – the quantity of development proposed*

82. Averaged across the site, the proposed development of 37 dwellings would amount to a density of about 32 dwellings per hectare (dph). That is slightly higher than the average within the surrounding residential area, but not unduly so. Nothing in the NPPF or PPG suggests that new development should be required to match that of its surroundings as a matter of course. Rather, the emphasis is on making good use of land, encouraging innovation, and good design, whilst still respecting local character and identity.
83. If development on the lower part of the site were restricted for any of the reasons discussed above, that would tend to increase the density of the remainder of the site, to above 32 dph. At the extreme, if all of the built development were concentrated in the upper area, the density there would be around 47 dph. But that would be offset by a lower density in the lower area; it would not change the overall density of the development as a whole. The existing settlement itself contains a wide range of variation in densities, both above and below what is now proposed; including lower density at Green Lane, but higher in the Swanwick Lane terraces, the Swanwick Quay flats, and the proposed Marina development. There is nothing inherently objectionable about such differences.
84. I accept that the submitted illustrative plan has some shortcomings. I agree that it would be desirable for the development to present an active frontage to the public realm, including Swanwick Lane and the play area, and that issues such as overlooking and relationships to surrounding properties need careful

attention. But all of these are reserved matters, and there is nothing to suggest that they cannot be resolved at the appropriate stage.

85. I note that there is now no dispute that the north-western tree belt could be satisfactorily protected by the relevant provisions contained in the undertaking, together with a buffer zone which could be secured by condition.
86. Having regard for all the evidence before me, I can see no reason why an outline permission for 37 units should not be able to produce a satisfactory detailed scheme which satisfies national and local design policies.

*Other matters relating to effects on character and appearance*

87. Although the appeal site was included in the coastal zone that was identified in the FBLP, that policy has now ceased to have any effect. I note the suggestion that the 'coastline' and 'coastal locations' now referred to in Policy CS14 must be the same as that area, but this does not follow. The areas in question are not defined on any map. Whilst Lower Swanwick might be described as being just within the upper reaches of the river estuary, it is some way from what would normally be considered the coastline. In my view, the area is clearly not the kind of 'undeveloped coast' to which paragraph 114 of the NPPF refers. In any event, for the same reasons as those given above, I do not consider that the development would have any significant adverse effect on the character or appearance of the coastal area, or that of the Hamble estuary.
88. As I have already indicated, I appreciate that the site is valued by local people. However, the NPPF advice on protecting 'valued landscapes', in paragraph 109, is placed in the context of conserving and enhancing the natural environment. In the present case, in view of my conclusions on the above matters, it seems to me that the appeal site does not contribute significantly to the natural environment in any of the ways to which this paragraph is directed. I can therefore find no reasonable basis for applying paragraph 109 here.

*Conclusions regarding the effects on character and appearance*

89. I conclude that the proposed development would have no material adverse effects on the character or appearance of the countryside, or of the settlement of Lower Swanwick. As such, it would not conflict with any of the relevant policies, including FLBP Policy DG4, or FCS Policies CS9, CS14 or CS17.

**Other matters**

*Traffic and safety*

90. I note the concerns raised by local residents, particularly concerning traffic, congestion and highway safety. I saw on my visit that local roads are already busy, especially in the peak periods, and the development now proposed would add more traffic to the network. However, as a percentage of the existing flows, the increase generated by 37 dwellings would be negligible, and the proposed design of the new junction on Swanwick Lane, including the proposed 'keep clear' road markings, would meet all of the Highway Authority's safety requirements. There are therefore no reasonable highway grounds for objection.
91. In addition, the replacement of the existing layby with a new off-street car park would undoubtedly be a safer arrangement for users of the children's play area,

as it would greatly reduce the potential for a small child to wander into the path of a moving vehicle. I appreciate that this might leave some residents looking for alternative overnight parking, but it seems to me that this is outweighed by the safety benefit.

92. A suitable junction design and the early provision of the car park can be secured by conditions.

*Residential amenity*

93. I accept that the proposed development would block views of the river from some neighbouring properties, and I fully understand what this would mean to their owners. However, the loss of private views weighs less heavily as a planning consideration than the other issues that have been identified. There is no reason to doubt that existing occupiers can be adequately protected from more serious impacts such as overlooking, overshadowing or overbearing effects, at the detailed stage. The development therefore need not unacceptably harm living conditions at any existing property.

*Local facilities*

94. I note the comments made about the adequacy of some local facilities. But on my tour of the area, I saw that the site is within reasonably easy reach of schools, doctors, shops and a variety of local employment. Public transport is available by bus and train, at most times of day, and the Highway Authority states that it intends to improve pedestrian and cycle facilities on the A27.
95. I accept that there may be pressures on some local services, especially doctors and schools, but at a time when population numbers are increasing throughout the region, the same is true in many areas, and ultimately the task of adapting to meet future needs is one for the providers of those services. In the present case, this would not be a proper reason to refuse planning permission.

*Wildlife*

96. The various observations relating to wildlife are noted, but the survey evidence shows that the site has limited habitat value. This can be adequately protected and enhanced by condition.

*The legal undertaking*

97. The undertaking provides for a financial contribution of £6,364.00 towards the mitigation of off-site ecological impacts. The need for such a contribution arises because of the development's proximity to designated sites of ecological importance, and the consequent potential cumulative impacts of developments in the area on protected bird species. A framework for such contributions has been agreed between the PUSH authorities under the Solent Disturbance and Mitigation Project, and a specific programme of mitigation works has been identified, focused on the Alver Valley Country Park, in the Borough of Gosport.
98. The undertaking also provides for the setting up of a management company to maintain the development, and for the carrying out of a woodland management plan and other landscaping works, in accordance with details to be approved by the Council.

99. From the information provided, I am satisfied that all of the obligations are necessary, and are properly related to the proposed development, so as to meet the relevant policy and legal tests<sup>11</sup>.
100. I note that a Community Infrastructure Levy (CIL) charging Schedule is in place in the borough, and that the proposed development would also be required to contribute to local infrastructure provision through a CIL payment.

### **Conditions**

101. I have considered the conditions suggested by the Council, and those others discussed at the inquiry, in the light of the tests in NPPF paragraph 206. If permission is granted, I agree that most of these conditions would be needed in one form or another, although with some re-ordering and rewording, to improve their clarity, precision and effectiveness. The conditions that I consider should be imposed on any permission in this case are set out in the attached Schedule.

#### *Conditions to be imposed*

102. Conditions Nos 1 – 3 set out the requirements as to reserved matters and the time limits for submission and commencement. In the light of my earlier conclusions regarding the Borough's housing land supply, I have reduced the time limits to less than the normal statutory periods, to better reflect the urgency of the need. I note the Council's suggested additional wording, but I see no evidence to support a limit of 3 storeys; nor any need for these conditions to refer to the mix of dwelling types.
103. Condition 4 sets out the requirements with regard to affordable housing, which is needed to comply with FCS Policy CS18. I agree that the condition should specify the number of affordable units, and their tenures, but the suggested detailed breakdown as to numbers of bedrooms and floorspaces seems to me over-prescriptive at this outline stage. The suggested contingency provisions relating to right-to-buy, staircasing, mortgagee in possession, and other exceptions, seem to me too imprecise for inclusion in a condition, and I have therefore omitted these.
104. Conditions 5 and 6 set out the requirements for pre-commencement investigations relating to archaeology and contamination. These are necessary to protect the historic environment and the health of future occupiers respectively.
105. Conditions 7 and 8 are aimed at securing the implementation and on-going management of high-quality landscaping, and Nos 9 – 13 provide for the protection of existing trees and hedges. All of these are needed to ensure a good standard of development.
106. Conditions 14 – 20 set out the requirements as to highway works, both off and on-site, and Nos 21 and 22 secure the provision of the proposed play area car park. All of these are necessary in the interests of highway safety and for the convenience of road users. In Condition 22, I have increased the period from 6 to 8 weeks, to ensure that compliance can be achieved.

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<sup>11</sup> In: (i) Regulation 122 of the Community Infrastructure Levy Regulations 2010; and (ii) NPPF paragraph 204

107. Condition 23 requires adequate measures to mitigate noise from road traffic and nearby commercial uses, as defined in the submitted noise report; and Condition 24 seeks the provision of suitable facilities for household refuse. Both are needed to ensure a satisfactory residential environment.
108. Condition 25 calls for ecological mitigation and enhancement, in order to minimise any impacts on biodiversity and secure a net gain in accordance with NPPF paragraph 109. The condition requires further details to be submitted and approved, since the existing ecological report contains limited detail as to any recommended measures.
109. Condition 26 requires compliance with the Code for Sustainable Homes, in accordance with FCS Policy CS15.

*Rejected conditions*

110. Having carefully considered all of the other suggested conditions, I find that none of these meet the relevant tests. The Council's proposed requirement for the development to be carried out only in accordance with the submitted illustrative plan would not be reasonable, because layout is a reserved matter, and in any event there is no evidence to suggest that no other form of layout would be acceptable. Equally, the appellants' tentative suggestion of an exclusion area in the southern corner would not be a reasonable condition, since it has not been shown that there is any overriding objection to development in that part of the site.
111. The proposed conditions relating to materials, car parking and cycle storage are unnecessary, as these details can be dealt with at the reserved matters stage. Lighting is adequately covered in the revised on-site highway works condition that I have included at Condition 20, and thus does not need an additional separate condition.
112. With regard to the proposed construction method statement and controls on the hours of construction work, powers are available to prevent obstruction of the public highway, or the deposit of mud, and to prevent nuisance to adjoining occupiers, under other legislation. There are no particular circumstances here that make it necessary to duplicate those controls through planning conditions.

**CONCLUSIONS**

113. The proposed development of 37 dwellings would be outside the settlement boundary defined in the FBLP, and would thus conflict with FCS Policy CS14. However, given the lack of a demonstrated 5-year housing supply, the settlement boundary must be regarded as out of date, and the weight that can be afforded to Policy CS14 is reduced accordingly.
114. Despite its designation on the FBLP proposals map, the appeal site does not appear in reality as an integral part of the countryside, nor of the coast, and does not contribute significantly to the character or appearance of those areas. Neither does the site, in its undeveloped state, contribute positively to the character or setting of the settlement. Consequently, no material conflicts arise in respect of any of the policies that are concerned with protecting these areas, in either the development plan or the NPPF.

115. The site lies within the Western Wards area, which is identified in Policies CS6 and CS9 as one of the District's preferred locations for housing development. The local infrastructure and services are adequate to serve a development on the scale now proposed.
116. So, on the one hand, the development would result in the loss of an undeveloped, but otherwise unremarkable, parcel of open land. On the other hand, the proposed development would make a valuable contribution to meeting local housing needs, including affordable housing provision. There would also be a modest public benefit in the provision of the proposed car park to serve the existing play area. And in addition there would be the opportunity, at the reserved matters stage, for the Council to seek to secure a high-quality scheme, which could make better use of the land, and enhance the townscape.
117. In view of the unmet housing need, the benefit of adding 37 new dwellings to the local housing supply commands substantial weight. Together with the car park and the potential for townscape enhancement, it seems to me that the conflict with Policy CS14 and any other harm arising from the development would be significantly and demonstrably outweighed by these benefits.
118. Having regard to the three 'dimensions' of sustainable development, and all of the relevant policies contained in the NPPF, I conclude that the development now proposed would constitute the kind of sustainable development that the NPPF seeks to encourage and promote. I have taken into account all the other matters raised, but none alters this conclusion.
119. The appeal is therefore allowed.

*John Felgate*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

The planning permission to which this decision relates is granted subject to the following conditions (numbered 1 - 26):

### *Reserved matters and time limits*

- 1) No development shall be commenced until details of the appearance, landscaping, layout, and scale (hereinafter called "the *reserved matters*") of the proposed development have been submitted to the local planning authority and approved in writing. The development shall be carried out in accordance with the details thus approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
- 3) The development shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.

### *Affordable housing*

- 4) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to the local planning authority and approved in writing. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the NPPF. The scheme shall provide for 15 units of affordable housing, including 10 for 'affordable rented' tenure, and 5 for shared ownership. The affordable housing scheme shall also contain details of:
  - (i) the proposed mix of types and sizes of the affordable housing units, and their location within the site;
  - (ii) the proposed timing of the construction of the affordable units, in relation to the occupancy of the market housing;
  - (iii) the proposed arrangements for the transfer of the affordable housing to an affordable housing provider;
  - (iv) the arrangements to ensure affordability for the initial and subsequent occupiers in perpetuity; and
  - (v) the occupancy criteria and the means by which such criteria are to be enforced.

### *Archaeology*

- 5) No development shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme of investigation which has been submitted to the local planning authority and approved in writing.

### *Contamination*

- 6) No development shall take place until the site has been investigated for soil contamination, and any such contamination found to be present has been removed or rendered harmless, in accordance with a scheme to be submitted to the local planning authority and approved in writing. In addition:
  - (i) If, during the course of construction, any contamination is found which has not been identified previously, no further work shall take place until that contamination has been removed or rendered harmless, in accordance with additional measures to be submitted to and approved in writing by the local planning authority; and
  - (ii) If any contamination has been found to be present at any stage, either before or during construction, no part of the proposed development shall be brought into use until a verification report has been submitted to and approved by the local planning authority, showing that all such contamination has been treated, and the site

rendered safe for occupation, in accordance with the original contamination scheme and any further measures subsequently agreed.

*Landscaping*

- 7) The landscaping details to be approved under Condition 1 shall include details of all planting and seeding, the surfacing of all hard surfaced areas, all boundary treatments, all re-grading or re-contouring of the land, and any signage and street furniture. The landscaping works thus approved shall be implemented in accordance with the approved details, and in accordance with the timescale specified in the submitted legal undertaking.
- 8) The landscaping details to be approved under Condition 1 shall also include a landscape management plan. Following the implementation of the landscaping works, all of the landscaped areas shall be maintained thereafter in accordance with the details thus approved. Any tree or plant forming part of the approved landscaping scheme which dies, or becomes seriously damaged or diseased, or is removed for any reason, within a period of 5 years after planting, shall be replaced during the next planting season with others of similar size and species.

*Existing trees and hedgerows*

- 9) No development shall take place until a tree and hedgerow protection scheme has been submitted to the local planning authority and approved in writing. The scheme shall contain details of proposed measures for the protection and retention of all of the existing trees and hedgerows on and adjacent to the site during construction. The scheme shall also identify a suitably qualified Arboricultural Supervisor.
- 10) The measures to be approved under Condition 9 shall include protective fencing, and such fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought on to the site, and shall remain in place until the latter have been removed from the site and the development has been completed. Nothing shall be stored or placed in any area fenced in accordance with this condition, and the ground levels within these areas shall not be altered, nor shall any excavation be made, except with the written consent of the local planning authority.
- 11) No tree or hedgerow on the site shall at any time be cut down, uprooted or destroyed, nor be topped, lopped or pruned, other than in accordance with details approved within either the tree and hedgerow protection scheme (under Condition 9) or the landscape management plan (under Condition 8). Notwithstanding this requirement, in the event that any existing tree or hedgerow dies or is lost for any reason, within a period of 5 years from the date of completion of the development, replacement planting shall be carried out in accordance with details to be approved in writing by the local planning authority.
- 12) All works approved under Conditions 9 - 11 shall be carried out in accordance with BS 5837:2012, and shall be overseen by the approved Arboricultural Supervisor.
- 13) The layout details to be submitted under Condition 1 shall include provision for a 5m-wide woodland buffer zone alongside the whole length of the tree belt on the site's north-western boundary, as shown on Plan No PP1220-101-00 (Revision. P2). Within this buffer zone, the land shall be used only for communal purposes, including landscaping, open space, and roadways, and no part of the buffer zone shall be included within the curtilage of any dwelling.

*Access and off-site highway works*

- 14) The proposed new access to the site and related off-site highway works shall be laid out in accordance with the submitted details shown on Plan No. A083488\_PR\_01. These works shall include the removal of the existing layby in Swanwick Lane, the

realignment of the footway alongside it, and the provision of visibility splays of 2.4m x 65m in both directions, all as shown on this approved plan.

- 15) In addition, the following off-site works are to be carried out, in accordance with details to be submitted to the local planning authority and approved in writing:
  - (i) the making good of the redundant footway and layby areas; and
  - (ii) the permanent closure of the existing site access to the north of the play area.
- 16) No development (other than that required to comply with this condition) shall be carried out until the existing layby has been closed, and the site access has been constructed to at least binder course level, including the first 10m of the access road.
- 17) No development or works of any kind (including those specified in condition 16), shall be carried out until a timetable for the full completion of all the access and off-site highway works required under Conditions 14 - 16 has been submitted to the local planning authority and approved in writing. These works shall thereafter be carried out and completed in accordance with the timetable thus approved.
- 18) No new dwelling shall be occupied until 'keep clear' road markings have been provided in Swanwick Lane, in accordance with details to be submitted to the local planning authority and approved in writing.
- 19) Once the visibility splays referred to in Condition 14 have been created, clear visibility within the splay areas shall be maintained thereafter, above a height of 600mm from ground level.

*On-site highway works*

- 20) The details to be submitted under Condition 1 above shall include details of all necessary on-site highway infrastructure, including access roads, turning areas, footways, street lighting and highway drainage, together with a timetable for the implementation of these on-site works. No dwelling shall be occupied until the on-site highway infrastructure serving that unit has been provided, in accordance with the approved details, and the relevant roads and footways finished to at least binder course level. These on-site highway works shall thereafter be fully completed in accordance with the approved timetable.

*Play area car park*

- 21) The layout details to be submitted under Condition 1.1 above shall include details of the proposed new car park for the existing play area adjacent to the site. The car park shall provide a minimum of 6 spaces, and shall be laid out in accordance with the details thus approved.
- 22) The proposed car park to be provided under Condition 21 shall be completed and made available for public use in connection with the play area, no later than 8 weeks from the date when the existing layby is closed. Thereafter, the car park shall be retained and kept available for its stated use.

*Noise mitigation*

- 23) No construction work on any new dwelling shall be commenced until a scheme of noise mitigation, including details of the proposed glazing and ventilation systems, has been submitted to the local planning authority and approved in writing. The submitted details shall demonstrate that the new dwellings are designed not to exceed the following maximum internal noise levels:

Daytime average (all habitable rooms):	35 dB $L_{Aeq}$
Night-time average (bedrooms):	30 dB $L_{Aeq}$
Night-time maximum (bedrooms):	45 dB $L_{Amax}$

*Refuse storage*

- 24) The details to be submitted for approval under Condition 1 shall include details of the provision to be made for the storage of household refuse for each proposed dwelling. No dwelling shall be occupied until the approved provision has been made available for use by the occupiers of that dwelling. Thereafter, the approved refuse storage provisions shall be retained in accordance with the details thus approved.

*Ecological mitigation*

- 25) No development shall take place until a detailed scheme of ecological mitigation and enhancement measures has been submitted to the local planning authority and approved in writing. The scheme shall include a timetable for the implementation of the necessary works, and those works shall be carried out in accordance with the scheme and timetable thus approved.

*Code for Sustainable Homes*

- 26) The proposed dwellings shall achieve Level 4 of the Code for Sustainable Homes. No new dwelling shall be occupied until a final Code Certificate has been issued for that dwelling, certifying that Code Level 4 has been achieved.

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Ground, of Counsel      Instructed by the Solicitor to the Council

He called:

Mr Stephen Jupp, BA(Hons) LLM MRTPI	Planning consultant
Mr Peter Home, MA(Oxf) MRTPI	Adams Hendry

### FOR THE APPELLANT:

Mr Christopher Boyle, QC      Instructed by WYG Planning

He called:

Mr Stephen Brown, BSc(Hons) DipTP MRTPI	Woolf Bond Planning
Mr Duncan McInerney, BSc(Hons) MLD CMLI	The Environmental Dimension Partnership
Mr Martin Hawthorne, BSc(Hons) MRTPI	WYG Planning

### OTHER INTERESTED PERSONS:

Cllr Sean Woodward	Leader of Fareham BC and ward member for Sarisbury
Mr Jim Wood	Chairman, Burr ridge & Swanwick Residents' Association
Mr John Grover	Local resident
Mr Clive Nightingale	Local resident
Miss Sarah-Jane Moore	Local resident
Ms Suzanne Rosenbrier	Local resident (also speaking on behalf of Ms Kate Winkworth, local resident)
Mr Don Frost	Local resident

## **DOCUMENTS TABLED AT THE INQUIRY AND AFTERWARDS**

### **TABLED BY THE APPELLANTS**

- 1 Table: housing completions against requirement, 2006-14
- 2 Eastleigh Borough Local Plan examination: Inspector's preliminary report on housing needs and supply, 28 November 2014
- 3 Dartford BC v SoS and Landhold Capital Ltd: judgement dated 24 June 2014 [*2014 EWHC 2636 Admin*]
- 4 Photographs of the appeal site from the railway line
- 5 Photographs of the appeal site from Bridge Road, December 2014
- 6 Swanwick Marina – approved plan
- 7 Secretary of State's appeal decision – Droitwich Spa (APP/H1840/A/13/2199085)
- 8 Secretary of State's appeal decision – Ramsgate (APP/Z2260/A/14/2213265)
- 9 Appeal decision – Swanley (APP/G2245/A/13/2197478)
- 10 Bus timetables
- 11 Train timetables: Bursleden - Southampton
- 12 Train timetables: Bursleden - Portsmouth
- 13 Welborne strategic framework plan, annotated by Mr Hawthorne to show land not controlled by the promoters
- 14 Correspondence relating to screening direction for Welborne development
- 15 Executed unilateral undertaking, dated 9 December 2014
- 16 Appellants' suggested wording for a condition restricting development on part of the site, and related plans
- 17 Mr Boyle's closing submissions
- 17A Email dated 23 December 2014 in response to the Ministerial letter re SHMAs

### **TABLED BY THE COUNCIL**

- 18 Appeal decision – Storrington (APP/Z3825/A/13/2202943)
- 19 Appeal decision – Emsworth (APP/L3815/A/13/2198341)
- 20 Emails relating to various housing supply sites
- 21 Welborne – planning programme chart
- 22 The Solent Disturbance Mitigation Project Interim Framework – report to PUSH Joint Committee, 25 March 2014, and minutes
- 23 Mr Home's summary statement
- 24 Inspector's decision re land at Blaby (S62A/2014/0001)
- 25 Swanwick Marina – planning permission and officers' report
- 26 S Northants v SoS and Barwood Homes Ltd: judgement dated 10 March 2014 [*2014 EWHC 570 Admin*]
- 27 Mr Ground's closing submissions
- 27A Email dated 22 December 2014 relating to the Ministerial letter re SHMAs

### **TABLED BY THE OTHER PARTICIPANTS**

- 28 Cllr Woodward's statement
- 29 Mr Wood's statement
- 30 Mr Grover's statement
- 31 Mr Nightingale's statement
- 32 Miss Moore's statement
- 33 Ms Winkworth's written submission (presented by Ms Rosenbrier)
- 34 Aerial photograph dated 2013, tabled by Mr Grover

### **OTHER TABLED DOCUMENTS**

- 35 Statement of Common Ground on 5-year housing land supply
- 36 Extracts from Core Strategy 'interactive' proposals map
- 37 Proposed condition re affordable housing (tabled jointly)
- 38 Letter from the Minister of State for Housing and Planning, dated 19 December 2014, re Strategic Housing Market Assessments



## Appeal Decision

Inquiry held on 25 April 2017

Site visit made on 27 April 2017

by **S R G Baird BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 14 August 2017**

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**Appeal Ref: APP/A1720/W/16/3156344**

**Land north of Cranleigh Road and west of Wicor Primary School,  
Portchester, Fareham, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Persimmon Homes South Coast against the decision of Fareham Borough Council.
  - The application Ref P/15/0260/OA, dated 17 March 2015, was refused by notice dated 24 March 2016.
  - The development proposed is residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping on land north of Cranleigh Road and west of Wicor Primary School, Portchester, Fareham, Hampshire in accordance with the terms of the application, Ref P/15/0260/OA, dated 17 March 2015, subject to the conditions contained at Annex A of this decision.

### Preliminary Matters

2. The application was made in outline with all matters other than means of access reserved. The appellant and the local planning authority (lpa) confirmed that the drawings that comprise the planning application are Drawing Nos. LOC 1 Rev D – Location Plan and J-D1708.00 - Site Access Layout and Highway Improvements. The application plans are supported by 2 Illustrative Plans; Drawing Nos. 01 Rev W- Illustrative Site Plan and 2498-SK-04 Rev P3 – Indicative Landscape Strategy.
  3. The appellant has submitted a signed S106 Unilateral Undertaking (UU) providing for financial contributions towards: (a) mitigation in accordance with the Interim Solent Recreation Mitigation Partnership and (b) the approval and monitoring of a Travel Plan. In addition, the UU provides for the laying out of the public open space and that 40% of the dwellings would be affordable housing units.
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4. An application for an award of costs was made by Persimmon Homes South Coast against Fareham Borough Council. This application is the subject of a separate Decision.
5. Following the close of the inquiry, the Supreme Court issued a judgement<sup>1</sup> concerning the interpretation of paragraph 49 of the National Planning Policy Framework (Framework) and its relationship with Framework paragraph 14. The parties were given an opportunity to comment on the implications of this judgement for their cases. I have taken the judgement and the parties' comments into account in coming to my decision.

### **Main Issues**

6. These are:
  - (i.) whether the lpa can demonstrate a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land supply (HLS);
  - (ii.) the effect on the supply of Best and Most Versatile (B&MV) agricultural land; and
  - (iii.) the effect on the character and appearance of the area.

### **Reasons**

7. The development plan for the area includes the Core Strategy (CS) adopted in August 2011, the Local Plan Part 2: Development Sites and Policies adopted in June 2015 (LP2) and the Local Plan Part 3: The Welbourne Plan adopted in June 2015 (LP3). The lpa has commenced a Local Plan Review (LPR). It is anticipated that a draft Local Plan will be published for consultation in September 2017.

#### Issue 1 - Housing Land Supply

8. Framework paragraph 47 seeks to boost significantly the supply of housing. Lpas are enjoined to ensure that Local Plans meet the full, objectively assessed needs (OAN) for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. Lpas are to identify and update annually a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land against their housing requirements with an additional buffer of 5% or 20% where there has been a record of persistent under delivery of housing.
9. Here, the lpa's 5-year HLS calculation is based on the requirements of the CS, in particular Policy CS2, adopted in 2011. The CS has a plan period running from 2006 to 2026 and was produced in the context of the no longer extant regional strategy (The South-East Plan) and the then emerging South Hampshire Strategy (SHS), a non-statutory sub-regional plan produced by a consortium of several lpas.
10. Given the CS was adopted several months before the publication of the Framework and the CS housing requirement is largely based on the regional

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<sup>1</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).

strategy it is not a Framework compliant OAN. Although LPs 2 and 3 post-date the Framework, neither plan undertakes the identification of an OAN.

11. Given the above, and in light of the Navigator appeal decision<sup>2</sup>, the appellant submits that the starting point for calculating the HLS position should be based on the April 2016 Objectively Assessed Housing Need Update produced for the PUSH<sup>3</sup> authorities and the June 2016 PUSH Spatial Position Update. Both studies identify an OAN for Fareham that is materially higher than the CS housing requirement. The Ipa's position is that as LPs 2 and 3 have been found sound, and in light of PPG and Ministerial guidance on the use of SHMAs the housing requirement used to calculate the HLS is that contained in the CS. The Ipa's position is that until the LPR has been the subject of consultation, examination and adoption it is premature to use the PUSH OAN as the Borough's housing requirement.
12. PPG<sup>4</sup> advises that housing requirement figures in an up-to-date, adopted LP should be used as the starting point for calculating the 5-year HLS. PPG advises that considerable weight should be attached to the housing requirement figures in adopted LPs, which have successfully passed through the examination process, unless significant new evidence comes to light. However, PPG notes that evidence that dates back several years, such as that drawn from revoked regional strategies may not adequately reflect current needs. Thus, where evidence in a LP has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs i.e. SHMAs should be considered. That said the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints.
13. In December 2014, in a Ministerial letter, the Government clarified the policy position on emerging evidence in the form of SHMAs. The letter notes that the publication of a locally agreed assessment provides important new evidence and where appropriate will promote a revision of housing requirements in LPs. Lpas are expected to actively consider the new evidence over time and, where over a reasonable period they do not, Inspectors could reasonably question the approach to HLS. The Minister goes on to note that the outcome of a SHMA is untested and should not automatically be seen as a proxy for a final housing requirement in LPs or that it does not immediately or, in itself, invalidate housing numbers in an existing LP.
14. Here, the CS housing requirement is largely based on the no longer extant South East Plan, whose evidence base dates back to at least 2000. It is accepted that the CS does not contain a Framework compliant assessment of OAN and neither LPs 2 or 3 purport to set a housing requirement based on an OAN. The 2014 Ministerial guidance, in my view, restates the advice contained in the PPG and does not, in itself, preclude using up-to date SHMA information to assess the 5-year HLS.
15. The latest assessment of the "Policy-Off" OAN is contained in the April and June 2016 PUSH reports. These documents, as the introduction to the April

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<sup>2</sup> APP/A1720/A/14/2220031.

<sup>3</sup> Partnership for Urban South Hampshire.

<sup>4</sup> Paragraph 030 Ref ID: 3-030-20140306.

2016 report says, provide an analysis of housing need, which for Fareham is 420 dpa and 450 dpa respectively. These are substantial bodies of work that have been carried out in accordance with PPG guidance and at least one lpa has adopted the PUSH OAN calculated for its area as the basis for calculating the 5-year HLS. Here, the lpa acknowledges that the PUSH April 2016 OAN is the best evidence on the OAN for Fareham. I have taken careful note of the Minister's reference to lpa's considering the evidence over time and the reference to a reasonable period. Whilst the 2 reports are relatively recent, the lpa was aware during the Navigator appeal in December 2014 that the OAN identified in the 2014 South Hampshire SHMA was materially higher than the CS requirement. The decision in the Navigator appeal, which was not challenged, was predicated on an acceptance that the 2014 OAN provided a more suitable basis for a 5-year HLS calculation. In my experience it is rare in the extreme to conclude that the "Policy-Off" OAN is likely to reduce and it is clear from the April and June PUSH OAN reports that it continues to rise materially.

16. In line with PPG advice, it is, in my view, reasonable to conclude that the CS/LP 2 housing requirement is materially out-of-date and is derived on a basis that is inconsistent with the Framework. Thus, having regard to the case law<sup>5</sup> referred to, PPG and Framework policy, I consider that the 5-year HLS supply should be assessed on the basis of the PUSH April 2016 OAN.
17. Before dealing with the assessment of the 5-year HLS position, it is appropriate to deal with the matter of whether a 5 or 20% buffer should be added to the housing requirement. The lpa add a buffer to the housing requirement set out in the CS and LP 2, but not to the contribution to be made by the major urban extension at Welbourne (LP 3). The exclusion of Welbourne is predicated on the basis that it is a site specific allocation implementing a large-scale development proposal in the CS. I am not aware that there is support for such an approach either in the Framework or PPG and read on its face the Framework suggests that the buffer should be applied to the requirement as a whole. Accordingly, I consider the buffer figure should be applied to the requirement as a whole.
18. PPG<sup>6</sup> advises that the approach to identifying a record of persistent under delivery inevitably involves questions of judgement in order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing. The guidance indicates that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle. Here, I have details of net completions for the years 2006/07 to 2015/16 and these figures are not disputed by the lpa. For the period 2006/07 to 2010/11 the CS Policy CS2 requirement is applied and from then until 2015/16 the appellant applies the OAN figure taken from the PUSH April 2016 assessment of OAN. This is on the basis that the PUSH OAN figure is calculated from 2011. On this basis, completions only exceed the housing requirement in 2 out of the last 10 years. However, in the period up until 2014 when the then PUSH SHMA identified an OAN of 395 dpa the lpa could not have been expected to meet a

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<sup>5</sup> City and District of St Albans and The Queen (on the application of) Hunston Properties Limited Secretary of State for Communities and Local Government and anr [2103] EWCA Civ 1610 & Gallagher Homes Limited Lioncourt Homes Limited and Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin).

<sup>6</sup> Paragraph 035 Ref ID: 3-035-20140306.

need that it was not aware of. On this basis, allowing for peaks and troughs in the housing market it appears to me that there has been significant under-delivery in only 3 out of the last 10 years. On this basis, the application of a 20% buffer is not, in my view, justified.

19. Turning now to the 5-year HLS, I have considered 2 scenarios. One based on the requirements of CS Policy CS2, the lpa's preferred scenario, and one based on the up-to-date OAN figure. On the CS based approach, the 5-year housing land requirement is some 1,932 dwellings and the lpa claim a deliverable supply of some 2,003 dwellings, a surplus of some 71 units giving a 5.18-years' supply of housing land<sup>7</sup>. However, taking into account my conclusion on the appropriateness of excluding Welbourne from the buffer figure including it within the 5% allowance on the whole of the requirement would still return a HLS marginally above 5-years. The surplus would be reduced to some 13 units; a figure the lpa does not dispute.
20. The appellant disputes the deliverability of 9 of the LP 2 allocations, the deliverability of the brownfield site at Warsash Maritime Academy and the ability of the Welbourne allocation to deliver some 425 dwellings in years 4 and 5 of the HLS calculation. Using the lpa's CS housing requirement figure, the appellant's calculation gives a shortfall of some 1,965 units and estimates a 3.28-years' supply of housing land.
21. In coming to my conclusions on the deliverability of the disputed LP 2 sites, I have taken careful note of the lpa's submissions that the allocated sites were found "sound" by the Inspector when he examined LP 2 and that the sites continue to be listed in the Annual Monitoring Report (AMR). That said, LP 2 was examined in late 2014 based on a draft plan submitted for examination in mid-2014 and no doubt based on evidence obtained during 2013. The November 2016 AMR, other than containing a list, provides no detailed assessment of the sites. These assessments are, in my view, snapshots in time, which in the case of LP 2 were undertaken between 3 and 4 years ago. The deliverability of these sites needs to be kept under robust review and, given the paucity of information contained in the AMR, the value of these in making an up-to-date assessment of the HLS is limited.
22. To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable<sup>8</sup>. PPG<sup>9</sup> indicates that the 5-year HLS must be underpinned by "...robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out."
23. At the inquiry, the lpa provided an updated assessment of the deliverability of the disputed sites. However, the information provided on each site was limited and indeed the lpa's witness acknowledged that he did not have detailed information on the sites. The appellant's submission that the lpa's evidence regarding deliverability was based on, "...discussions with others about discussions with others" is an apt description. In my view, the lpa's evidence on deliverability relating to the LP 2 sites falls well below the

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<sup>7</sup> Table AB 1 submitted by the lpa at the inquiry.

<sup>8</sup> Footnote 11, National Planning Policy Framework.

<sup>9</sup> Paragraph 030 Ref. ID: 3-03020140306.

threshold set by PPG in that it is neither robust nor clearly and transparently set out. I have similar concerns regarding the inclusion within the 5-year supply of 100 units at Warsash Maritime Academy. Although this is a substantial site, the level of detail provided by the lpa on its deliverability is thin and lacks clarity and transparency.

24. LP 3 allocates some 371ha of mainly greenfield land at Welbourne to deliver some 6,000 dwellings and the lpa includes some 425 units within the 5-year supply in years 4 and 5. The delivery of Welbourne is a major undertaking and already the delivery of units has been pushed back in the programme. At one time the lpa considered that the delivery of dwellings would commence in 2016 with 120 units being completed by the end of the first quarter in 2017. Whilst I accept that significant pre-planning work has been carried out, a delivery partner will not be appointed until the beginning of 2018, major planning applications will have to be prepared and already, albeit as a precaution, the lpa is contemplating the use of compulsory purchase powers. Whilst I acknowledge the lpa's commitment to the delivery of Welbourne, on the evidence before me, it would appear that the potential to deliver a significant number of units towards the end of the 5-year period is optimistic.
25. In light of these findings, I am unable to safely conclude that at least 315 units, comprising the disputed list of LP 2 sites and the brownfield site at Warsash Maritime Academy, are capable of being considered as deliverable within the 5-year period. In this context, the lpa cannot demonstrate a 5-year supply of deliverable housing land.
26. In the scenario where the up-to-date OAN is used to derive the 5-year housing requirement and using the lpa's supply figures the lpa accepts that it could not demonstrate a 5-year HLS. At most, the evidence indicates that there would be a supply of some 3.6 years. However, given my conclusions regarding the deliverability of the disputed sites, I consider the HLS would be marginally over 2 years.
27. Drawing all of the above together, on whatever approach is used to identifying the 5-year housing land requirement, the lpa cannot demonstrate a 5-year supply of deliverable housing land. Indeed, on the balance of probabilities the available supply is well below the 5-year threshold.

#### Issue 2 – Best & Most Versatile Agricultural Land

28. The majority of the site is Grade 1 and the remainder Grade 2 agricultural land and is classed as best and most versatile land<sup>10</sup> (B&MV). CS Policy CS16 seeks to prevent the loss of B&MV. The Framework does not place a bar on the development of B&MV agricultural land. Framework paragraph 112 identifies that where development would involve the use of B&MV land, the economic and other benefits of that land should be taken into account and goes on to say where significant development is demonstrated to be necessary the use of poorer quality land should be used in preference to that of a higher quality i.e. apply a sequential approach. Here, given the appeal site extends to some 5.5ha, this proposal is not, in my view, a significant development where the sequential approach is engaged.

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<sup>10</sup> Annex 2, National Planning Policy Framework.

29. CS Policy CS16 was predicated on guidance contained in PPS7<sup>11</sup>, which the Secretary of State in his 2006 decision<sup>12</sup> described as containing a strong presumption against the loss of land of high agricultural value. PPS7 is no longer extant and CS Policy CS16, given that it says in a straightforward manner that it will prevent the loss of B&MV agricultural land without an opportunity to balance potential harm against potential benefits, is, in my view, inconsistent with the Framework and subject to the guidance contained at Framework paragraph 215.
30. The development would result in the permanent loss of B&MV agricultural land and as such would conflict with the provisions of CS Policy CS16. Accordingly, it must feature on the negative side of the planning balance, albeit the scale of the permanent loss would be limited.

#### Issue 3 – Character & Appearance

31. The appeal site abuts but lies outside the defined settlement boundary of Portchester. Whilst the development plan treats the area as countryside it is not subject to any landscape designation. Relevant development plan policies are CS Policies CS14 and 17 and LP 2 Policy DSP6. Policy CS14 indicates that development outside the defined settlement boundary will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Policy CS 17 seeks high quality design and layout and development should respond positively to and be respectful of key characteristics of the area including landscape. Except for certain categories of development, which do not apply in this case, LP 2 Policy DSP6 has a presumption against new residential development outside the defined settlement boundary. As such the proposal would be in conflict with LP 2 Policy DSP6.
32. Core Principles of the Framework seek to: ensure that planning secures high quality design ensuring that account is had to the different roles and characters of different areas recognising the intrinsic character and beauty of the countryside and a contribution to the conservation and enhancement of the natural environment. Framework paragraph 109 reiterates that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.
33. Both parties referred to various landscape character assessments. Of these the Fareham Borough Landscape Assessment examines the finest grain and is, in my view, the most relevant. In terms of landscape character, the appeal site sits on the eastern edge of Local Landscape Character Area (LCA) 12–Cams Wicor Coastal Fringe and to the south and east of LCAs 36 and 38 Urban Areas of Downend and Portchester South. LCA 12 is described as a discrete parcel of open landscape contained by the coast and the urban fringe. Whilst the main feature of this LCA is the extensive parkland and woodland of the Cam Hall Estate on its western edge the description notes that the LCA includes areas of open amenity landscape, fringe pasture and coastal industry to the east. The essential characteristics of the area are: an area of flat or gently undulating land occupied by mixed but open landscapes; a strong coastal influence and a strong fringe character with

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<sup>11</sup> Planning Policy Statement 7: Sustainable Development in Rural Areas.

<sup>12</sup> APP/A1720/A/05/1176455.

valuable areas of open space with attractive views out across Portsmouth Harbour and to Portsdown Hill and the Cams Hall Estate. The enhancement priorities for the area are to: maintain the open unbuilt character, particularly the estuary and coastal margins and improve the landscape quality of areas which lie between the settlement boundaries and the coast.

34. In terms of landscape and visual impact, whilst the appellant and the lpa use different terminology, in my view they both result in broadly the same outcome. Both parties agree that there would be substantial and adverse landscape and visual impacts. What is in dispute is the spatial extent over which these adverse effects would be experienced and whether the appeal site should be classed as a "valued" landscape.
35. In terms of visual impact, I had the opportunity to extensively walk the roads immediately around the site and the publicly accessible areas to the west. In addition, I visited Portsdown Hill and was able to assess the impact of the development from publically accessible vantage points.
36. Within the immediate area of the site from Cranleigh Road along its southern boundary and from Cranleigh Road southwards towards the junction with Gatehouse Road, the visual impact of the development to be at its highest, i.e. substantial and adverse. Further to the west along Cranleigh Road and from vantage points on the public footpaths and open space to the west, parts of the development, mainly the upper storeys and roof planes would be visible. However, the visual impact of the development would be significantly reduced by the degree of separation and the presence of existing tree/hedge planting and new boundary planting that could be conditioned as part of any permission. The magnitude of this impact would range from moderate to minor adverse depending on distance from the site.
37. Given there is no public access to the site and given the extent of intervening planting and industrial development on the foreshore there would be no material impact on views out over Portsmouth Harbour. In this context, the development would only have a limited adverse impact on views towards Portsdown Hill. The development would be in the foreground of the built-up area to the north and east and would not obscure publically available views of the hill from the east.
38. From public vantage points on Portsdown Hill there are sweeping panoramic views across Portchester and Portsmouth Harbour. Whilst the development would be noticeable, it would be seen as a modest extension of the existing built-up development to the north and east and against the backdrop of the housing area to the south of Cranleigh Road and mature planting beyond. The visual impact of the development would be mitigated by the above factors and the degree of separation from Portsdown Hill. Views of Portsmouth Harbour would not be interrupted or obscured and the wide sweep of the panoramic views would be maintained. In this context, the visual impact of the development from these vantage points would be minor.
39. Turning to whether the appeal site should be identified as a "valued" landscape and in the context of Framework paragraph 109 one whose enhanced planning status should be taken account of in the balancing exercise. I have taken careful note of the submissions made by interested persons and I was left in no doubt about their views on value. All landscapes are valued by someone at some time, particularly countryside

that is threatened by development. However, that does not necessarily make it a valued landscape for the purposes of Framework paragraph 49.

40. Although the Framework refers to valued landscapes it does not provide a definition of what type of landscape that might be. Framework paragraph 109 starts by reiterating the wider objective of enhancing the natural environment, which I take to mean the countryside in general and then it goes on to refer to valued landscapes, which must mean something more than just countryside in general. Case law<sup>13</sup> and Inspectors' decisions have identified that "valued" means something more than popular, such that a landscape was "valued" if it had physical attributes which took it out of the ordinary. In addition, the Guidelines for Landscape and Visual Impact Assessment (GLVIA3), provides at Box 5.1 a range of factors that can help in the identification of valued landscapes. These include landscape quality/condition; scenic quality; rarity, representativeness; conservation interests recreation value; perceptual aspects and associations. Whilst some of the factors go beyond the threshold identified by case law the Box 5.1 headings provide a useful context within which to assess "value". However, this is not a technical process and relies on subjective, albeit informed professional, judgement/experience.
41. Given the urbanising influence of built development on the northern eastern and southern boundaries and the generally overgrown nature of the site, I consider the landscape quality/condition of the site to be low/medium. For similar reasons, the site displays limited aesthetic appeal and it has low scenic value. Rarity and representativeness can be dealt with together. This is a landscape that does not contain rare landscape types or features. As such in terms of rarity and representativeness, I consider the value of the site/landscape to be low.
42. Given that the site has been neglected for some considerable time, the presence of the badger sett and the submissions regarding its ecology, it attracts a medium value for its conservation interest. There is no public access to the land other than it being a piece of a larger area of open land and has low recreational value and a medium value in terms of perceptual aspects. As far as I am aware the site /landscape has no cultural associations and as such attracts a low value. Reiterating again that this is not a technical exercise, drawing the Box 5.1 factors together, I consider the nature and value of the landscape of the appeal site to be ordinary/low. Combining this "score" with the case law requirement that the landscape should display physical attributes that takes it out of the ordinary, I conclude, that when looked at in the round the appeal site is not a Framework paragraph 109 valued landscape and does not benefit from the enhanced planning status that such an attribution would bring to the balancing exercise.
43. On this issue, the development would have a highly localised substantial and adverse impact on landscape character and visual impact. However, this impact would reduce with distance and for the most part in the wider area the landscape character and visual impact of the development would be

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<sup>13</sup> Stroud District Council v Secretary of State for Communities and Local Government [2015] EWHC 488 (Admin) & Cheshire East Borough Council v Secretary of State for communities and Local Government [2016] EWHC 694 (Admin).

minor moderate. That said the landscape and visual harm resulting from the development would conflict with CS Policies 14 and 17 and LP 2 Policy DSP6.

## **Other Considerations**

### Highways

44. I understand the concerns raised by residents particularly regarding the impact of traffic on congestion on the wider network and on Hatherley Crescent/Cornaway Lane at school dropping off/pick-up times. The planning application was accompanied by a robust Transport Assessment (TA) the scope of which was agreed with Hampshire County Council (HCC) as the Highway Authority (HA). In light of this study and its findings, the HA and the lpa, subject to the imposition of appropriate planning conditions, have no objection to the proposal on highway safety or traffic generation grounds. I have no reason to disagree with those conclusions.
45. In terms of the impact on the wider area, the TA concludes that the capacity of junctions within the study area would not be significantly impacted upon and that the estimated marginal increases in queue lengths would not significantly impact on the operation of the highway network. Congestion occurring at school drop off and pick-up times is restricted to short periods of the day and occurs only on weekdays during term time. Given the location of the site directly abutting the school, the development would be unlikely to generate additional vehicular traffic to and from the school. In my experience, additional traffic generated by the development would only likely to have an impact during the short morning drop-off window. These impacts are not a reason to withhold permission.

### Ecology

46. The site is located some 350m from the Portsmouth Harbour Site of Special Scientific Interest (SSSI) which forms part of the wider Portsmouth Harbour Special Protection Area (SPA) and Ramsar Site. The appellant submitted ecological appraisals and produced an Ecological Construction and Management Plan. Given the proximity of the site to the national and internally designated sites referred to above, there is potential for the development to affect the interest features for which they were designated.
47. The appellant submitted to the lpa a Habitat Regulations Assessment (HRA), which has been assessed by Natural England (NE). Based on what I consider to be a robust study, the HRA concludes that, having regard to measures that could be built-into the scheme and a financial contribution to the Solent Recreation and Mitigation Partnership, significant effects are unlikely to occur either alone or in combination on the interest features of the SPA and Ramsar. In light of these finding, and similar to the conclusion reached by NE, I conclude that an appropriate assessment under the regulations<sup>14</sup> is not required. Similarly, subject to the development being carried out in accordance with the details submitted with the application, NE indicates that the development would not damage or destroy the interest features for which the Portsmouth Harbour SSSI has been notified. Again, I have no reason to disagree with that conclusion.

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<sup>14</sup> The Conservation of Habitats and Species Regulations 2010 (As Amended).

48. There is an active badger sett within the site, which the appellant proposes to relocate within the area of public open space to the west. Badgers and their setts are protected by legislation<sup>15</sup>. Whilst the lpa has no objection to the relocation, the developer would require a separate licence from NE to remove the badgers. Whilst I note the concerns raised regarding the efficacy of artificial badger setts, they are, in my experience, in common usage and successful. I have no reason in this case to conclude there would be unacceptable harm or loss.
49. From the representations made both orally and in writing, I am in no doubt that the appeal site is highly regarded by local residents and the adjacent primary school as an ecological resource. The school's activities in introducing its pupils to the natural world are substantial and nationally recognised. Although the appeal site is privately owned and there is no public access to it, I recognise that the school views the site as a resource and an indirect source for the wildlife that inhabits the school site. Clearly whilst there would be some loss of habitat, this relates to many species that are common and widespread. The proposed area of public open space albeit it would be divorced from the school grounds by a housing estate, would be publicly available and could be laid out and managed as an improved ecological resource. Moreover, the tending and maturing of private gardens does provide a range of diverse habitats for a wide range of species. Whilst not a direct replacement the variety of habitats provided by private gardens would mitigate any impact on local ecology.
50. Drawing all of the above together, I conclude that the proposed development would not have a materially unacceptable effect on local ecology.

#### Education and Health

51. The development would generate a demand for 31 primary school places and 22 secondary school places. Research by the appellant identifies that the 5 infant/junior schools in Portchester are full. The Northern Infant school has recently been expanded and the Northern Junior School has a proposal to expand in 2019. HCC as the local education authority (LEA) indicates that the local secondary school has spaces available to meet the needs of the development. Whilst there is pressure on local primary schools, the appellant's submission that some of the existing school places are taken up by pupils from out of the school planning area, which could be used by local children, is not disputed by the lpa. There is no objection from the lpa or LEA on the grounds that the proposal would result in unacceptable pressure on local education infrastructure. I have no reason to disagree.
52. Evidence submitted by the appellant indicates that all primary healthcare centres within some 2 miles of the site are currently accepting patients. Whilst there were submissions that appointments are not easy to obtain, this is not a local problem and is something that occurs nationwide. There is no objection from the local providing body for primary care or the lpa.

#### Benefits

53. The proposed development would deliver economic, social and environmental benefits. Chief amongst these are that the proposal would

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<sup>15</sup> Protection of Badgers Act 1992.

deliver up to 120 homes including up to 48 affordable units. Economic benefits that would flow from the application include those arising from employment during the development phase; a New Homes Bonus payment and increased Council Tax revenues. When undertaking the planning balance factors such as these are generally held to be benefits of development albeit they are benefits that would occur from most developments.

#### S106 Undertaking

54. Framework paragraph 204 and CIL Regulation 122 say that Planning Obligations should only be sought and weight attached to their provisions where they meet all of the following tests. These are: they are necessary to make the development acceptable in planning terms; they are directly related to the development; and they are fairly and reasonably related in scale and kind to the development.
55. NE's lack of objection to the development is based on the developer making a contribution to the implementation of the Solent Recreation Mitigation Scheme. The purpose of the contribution is to mitigate disturbance of the Portsmouth Harbour SSSI and the wider Portsmouth Harbour Special SPA and Ramsar Site. The UU provides a mechanism for the provision of affordable housing required by development plan policy and the provision and retention of the public open space. These obligations are necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, in this respect, the UU is consistent with the guidance at Framework paragraph 204 and Regulations 122 of the CIL Regulations and where appropriate, I have attached weight to them in coming to my conclusion
56. The UU provides for (i) the submission of a Full Travel Plan; (ii) the payment of £5,750 to Hampshire County Council made up of £750 towards the cost of approving a Full Travel Plan and £5,000 to monitor compliance with it; (iii) the appointment of a Travel Plan Coordinator and (iv) a Travel Plan Bond.
57. The submission of a Travel Plan is a matter that could be dealt with by the imposition of an appropriate condition. Here, the only explanation I have for the monitoring fees is that *"it has been assessed based on the highway authority's experience with regards to monitoring such developments and is justified to ensure that the modal targets within the Travel Plan area achieved and if not there are "punitive" measures within the travel plan that can be instigated to endeavour to achieve the desired modal targets. The monitoring process ensures this check."*
58. The test contained within the Framework and CIL Regulation 122 i.e. "necessary to make the development acceptable in planning terms" is a high threshold in that the obligation has to be necessary and not merely desirable. Moreover, there is nothing in the Planning Acts, the CIL Regulations, the Framework or PPG that suggest that an authority could or should claim monitoring fees as part of a planning obligation. The monitoring of the Travel Plan is, in my view, one of the functions of the County Council. Despite my request for supporting evidence, I conclude that

in the absence of a full justification supported by evidence<sup>16</sup> the payment of a monitoring fee and the provision of a Travel Plan Bond are unnecessary to make the development acceptable in planning terms nor am I in a position to conclude that the requested contribution and Bond are fair and reasonably related in scale and kind to the development. For these reasons, I consider the requested contribution does not accord with the tests set out in the Framework and CIL Regulation 122 and I have not taken it into account in coming to my decision.

### **The Planning Balance**

59. The starting point is that S38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 requires that decisions on applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
60. The site is located outside the settlement boundary of Portchester and does not fall within any of the categories of development that may be permitted by LP Policy DSP6; as such the proposal is in conflict with this policy. Both parties refer to CS Policy CS11, which refers to development within the settlement boundaries of Portchester being permitted. Given the specific nature of this policy and the location of the site outside the settlement boundary, I consider this policy is not relevant to the overall planning balance. I have concluded that the proposed development would have an adverse impact on landscape character and a substantial adverse visual amenity albeit that impact would be highly localised. As such the proposal would be in conflict with CS Policies CS14 and CS17. The proposal would result in the loss of B&MV and would be in conflict with CS Policy CS16.
61. Paragraph 2 of the Framework confirms that it is a material consideration in planning decisions. The fourth bullet point of Framework paragraph 14 has 2 limbs. The first limb indicates that where the development plan is absent, silent or relevant policies are out-of-date planning permission should be granted unless 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. The second limb indicates that development proposals should be granted unless or specific policies in the Framework indicate development should be restricted. Framework paragraph 49 says that relevant policies for the supply of housing should not be considered up-to-date, if the lpa cannot show a 5-year supply of deliverable housing sites. Framework paragraph 215 indicates that due weight should be given to relevant policies in existing plans according to their consistency with the Framework.
62. In relation to housing land supply, the lpa cannot demonstrate a 5-year supply of deliverable housing sites. In this context, the decision of the Supreme Court<sup>17</sup> indicates that such a shortfall triggers the fourth bullet point of Framework paragraph 14. In this case, based on the evidence before me it is only the first limb of the fourth bullet point that is engaged.

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<sup>16</sup> Planning Policy Guidance, Paragraph: 004 Reference ID: 23b-004-20150326.

<sup>17</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin) .

The appellant and the lpa agree that CS Policy CS14 and LP 2 Policy DSP6 are not relevant policies for the supply of housing and I have no reason to disagree. Given, the nature of CS Policy CS 17 – first bullet point, I consider this is not a relevant policy for the supply of housing either.

63. Based on the evidence before me the housing land supply stands at just over 2-years resulting in a significant shortfall. I acknowledge that the lpa is seeking to address its ongoing housing requirements through the preparation of the Local Plan Review and the promotion of the sustainable Urban Extension at Welbourne. That said, a consultation draft of the Local Plan Review is not anticipated to be published until September 2017 and I would not expect that plan to be adopted before mid-2018 at the earliest. Welbourne is the subject of an adopted LP and will be progressed through the appointment of a development partner who will not be identified until early 2018. Once identified the lpa/development partner will subsequently need to involve themselves in land acquisition through negotiation and/or compulsory purchase and to submit/determine major planning applications. On all the evidence before me, it appears to me, given the scale of the development and the constraints involved, which include the provision of a new junction on the M27 (albeit up to 500 units may be permitted before the new junction is required), the potential for significant development within the 5-year period is limited. In these circumstances, the material shortfall in housing land supply will continue and the backlog of housing required to meet local needs will grow.
64. As far as I am aware there are no constraints that would delay this development and as such granting permission would, in line with the clear objectives spelt out at Framework paragraph 47, provide for a significant and material boost/contribution to meeting housing needs within the District, particularly affordable housing. Drawing all this together, I consider that the contribution the appeal site could make to meeting the District's housing needs attracts very substantial weight in the planning balance.
65. Whilst, the objectives of CS Policy C14, CS 17 and LP 2 Policy DSP6 in seeking to protect the countryside from development are consistent with the fifth Core Principle identified at Framework paragraph 17, I conclude in this case that the limited harm in terms of the loss of B&MV agricultural land and landscape character and visual impact would not significantly and demonstrably outweigh the benefits of this scheme in making a material contribution to the significant shortfall in housing land. Accordingly, having regard to Framework paragraph 14, I consider the proposed development represents sustainable development.
66. In coming to the above conclusion, I have had regard to the appeal decision issued by the Secretary of State in 2006. However, I consider this decision was issued in the context of a materially different development plan context. Then, although located in countryside, the area was also identified in the development plan as a Local Gap and a Coastal Zone. Here local policy indicated that development that would physically or visually diminish undeveloped land within the gap would not be permitted. Now, although still defined for planning purposes as countryside, the open area to the west and south of the built-up area of Portchester is no longer classed as a Local Gap or within the Coastal Zone.

67. For the reasons, given above and having regard to all other considerations, I conclude that the appeal should be allowed.

### **Planning Conditions**

68. For the avoidance of doubt and in the interests of proper planning and I have imposed a condition relating to the specification of plans (4)<sup>18</sup>. Conditions relating the submission of details and the implementation of approved schemes in relation to: the construction of the estate roads (6); boundary treatment (7); archaeological investigations (8); foul and surface water drainage (9); an arboricultural assessment (10); existing and finished ground level and finished floor levels (11); the prevention of mud on the highway (12) construction traffic access (13) and the submission of a Travel Plan (14) are reasonable and necessary in the interests of the appearance of the area, highway safety, the identification and preservation of potential archaeology and the protection neighbours' living conditions. Conditions relating the prevention of fires (15), hours of operation (16); the treatment of hard surfaces (17) and a restriction on eaves height (20) are reasonable and necessary in the interests of appearance and neighbours' living conditions. In the interests of the appearance of the area, a condition relating to landscape implementation and maintenance (18) is necessary. In the interests of ecology, a condition requiring the development to be carried out in accordance with the submitted Ecological Construction and Management Plan (19) is necessary. Where necessary and in the interests of precision and enforceability I have reworded the suggested conditions.
69. At the inquiry, the lpa and the appellant agreed that the suggested conditions relating to boundary treatment, access details, external lighting/floodlighting and the insertion of roof lights were matters that were covered by the submitted plans, were unnecessary , duplicated other conditions or were matters that could be dealt with as part of the reserved matters submissions. I have not imposed these conditions.

*George Baird*  
Inspector

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<sup>18</sup> Numbers relate to those in the Schedule of Conditions.

## **Annex A**

### **SCHEDULE OF CONDITIONS**

1. Details of the appearance, scale, layout and landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
4. The development shall be carried out in accordance with the following approved drawings: Location Plan - Drawing 6132 LOC Rev D and J-D1708.00 Site access Layout and Highway Improvements.
5. No housing development including gardens and roads shall take place to the west of the hedgerow running north to south through the site as shown on Drawing No. 01 Rev W- Illustrative Site Plan.
6. No development shall commence until details of the width, alignment, gradient and type of construction proposed for any roads, footways and/or access/accesses, to include all relevant horizontal and longitudinal cross sections showing the existing and proposed ground levels, together with details of street lighting (where appropriate), the method of disposing of surface water, and details of a programme for the making up of roads and footways have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
7. No development shall commence until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwellings are first occupied or in accordance with a timetable agreed in writing with the local planning authority and shall thereafter be retained at all times.
8. No development shall commence until a preliminary archaeological survey establishing the location, extent, nature and significance of archaeological remains on the site including a mitigation strategy, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the agreed mitigation strategy.
9. No development shall commence on site until details of sewerage and surface water drainage works to serve the development hereby permitted have been submitted to and approved in writing by the local planning authority. None of the dwellings shall be occupied until the drainage works have been completed in accordance with the approved details.
10. No development shall commence until an Arboricultural Impact Assessment Report and Method Statement for tree/hedgerow protection has been

- submitted to and approved in writing by the local planning authority and the approved scheme implemented. The tree/hedgerow protection shall be retained throughout the development period until such time as all equipment, machinery and surplus materials have been removed from the site.
11. No development shall commence until details of the internal finished floor levels of all of the proposed buildings in relation to the existing and finished ground levels on the site and the adjacent land have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  12. No development shall commence until details of the measures to be taken to prevent spoil and mud being deposited on the public highway by vehicles leaving the site during the construction works have been submitted to and approved in writing by the local planning authority. The approved measures shall be fully implemented upon the commencement of development and shall be retained for the duration of construction of the development.
  13. No development shall commence until the local planning authority have approved details of how construction traffic will access the site, how provision is to be made on site for the parking and turning of operatives and delivery vehicles and the areas to be used for the storage of building materials, plant, excavated materials and huts associated with the implementation of the permitted development. The areas and facilities approved in pursuance to this condition shall be made available before construction works commence on site shall thereafter be kept available at all times during the construction period, unless otherwise agreed in writing with the local planning authority.
  14. Prior to the commencement of construction works a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall include arrangements for monitoring and effective enforcement. Development shall be carried out in accordance with the approved details.
  15. No materials obtained from site clearance or from construction works shall be burnt on the site.
  16. No work relating to the construction of any of the development hereby permitted (including works of demolition or preparation prior to operations) shall take place before the hours of 0800 or after 1800 hours Monday to Friday, before the hours of 0800 or after 1300 hours on Saturdays or at all on Sundays or recognised public holidays, unless otherwise first agreed in writing with the local planning authority.
  17. No development shall proceed beyond damp proof course level until details of the finished treatment of all areas to be hard surfaced have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and the hard surfaced areas subsequently retained as constructed.
  18. The landscaping scheme submitted under Condition 1 above, shall be implemented within the first planting season following the commencement of the development or as otherwise agreed in writing with the local planning

authority and shall be maintained in accordance with the agreed schedule. Any trees or plants which, within a period of 5 years from first planting, are removed die or become seriously damaged or defective, shall be replaced, within the next available planting season, with others of the same species, size and number as originally approved.

19. The development shall be carried out strictly in accordance with the Ecological Construction and Management Plan dated August 2016 and updated November 2016.
20. The dwellings shall not exceed two-storey eaves height.

## **ANNEX B**

### **APPEARANCES**

#### FOR THE APPELLANT

Christopher Boyle QC, instructed by the Bryan Jezepeh Consultancy.

He called:

Steven Brown BSc (Hons) Dip TP, MRTPI  
Woolf Bond Planning.

Liz Bryant MA, CMLI  
Allen Pyke Associates.

Michael Knappett BSc (Hons), BTP, MRTPI.  
Bryan Jezepeh Consultancy.

#### FOR THE LOCAL PLANNING AUTHORITY

Paul Stinchcombe QC, instructed by Fareham Borough Council

He called:

Andy Blaxland  
Director, Adams Hendry Consulting Limited.

Nicola Brown BA (Hons), BLand Arch, CertUD, CMLI  
Director, Huskisson Brown.

#### INTERESTED PERSONS

Mr Mullen.  
Mrs Fox.  
Ms Sawyer.  
Mr Woodman Portchester Civic Society.  
Cllr Price.  
Cllr Walker.  
Cllr Bell.  
Cllr Fazackarley.  
Cllr Cunningham.  
Ms Morton, Wicor Primary School.  
Mr Cable.  
Mr Britton.  
Mrs Kirk.

#### DOCUMENTS SUBMITTED AT THE INQUIRY

- Doc 1 - Phides Estates (Overseas) Limited and Secretary of State for Communities and Local Government and Shepway Council and David Plumstead [2015] EWHC 827 (Admin).
- Doc 2 - Supplementary Tables AB1, AB2 & AB3 to the evidence of Mr Blaxland.

- Doc 3 - Additional Suggested Condition – Field A.
- Doc 4 - Note in response to question from Mr Boyle.
- Doc 5 - Submissions by Cllr Walker.
- Doc 6 - Submissions by Cllr. Price.
- Doc 7 - Submissions by Cllr. Bell.
- Doc 8 - Submissions by Cllr Fazackarley.
- Doc 9 - Submissions by Cllr Cunningham.
- Doc 10 - Submissions by Portchester Civic Society.
- Doc 11 - Submissions by Mr Cable.
- Doc 12 - Submissions by Wicor Primary School.
- Doc 13 - Submissions by Mrs Kirk.
- Doc 14 - Summary of S106 Unilateral Undertaking.
- Doc 15 - Lpa CIL Compliance Schedule.
- Doc 16 - Email dated 27 April 2017, Response by Hampshire County Council regarding S106 Unilateral Undertaking Travel Plan Contributions.
- Doc 17 - S106 Unilateral Undertaking.
- Doc 18 - Minutes of Planning Committee 24 March 2016.
- Doc 19 - Appellant’s application for coasts.
- Doc 20 - Lpa response to the application for costs.

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED

- Doc 21 - Appellant’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).
- Doc 22 - Lpa’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).



## Appeal Decision

Hearing Held on 14 and 15 August 2018

Site visit made on 15 August 2018

**by Kenneth Stone BSc Hons DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 10<sup>th</sup> September 2018**

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**Appeal Ref: APP/A1720/W/17/3192431**

**Sawmills Industrial Park, Wickham Road, Fareham, Hampshire PO17 5BT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by BST Warehouses Ltd against Fareham Borough Council.
  - The application Ref P/17/0189/FP, is dated 17 February 2017.
  - The development proposed is described as 'demolition, site clearance and remediation with the erection of 72 C3 residential dwellings and associated access, parking, ancillary infrastructure and landscaping works'.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing applications for costs were made by BST Warehouses Ltd against Fareham Borough Council and by Fareham Borough Council against BST Warehouses Ltd. These applications are the subject of separate decisions.

### Procedural matters

3. Prior to validation the planning application was the subject of a screening direction issued by the Secretary of State for the Department for Communities and Local Government. The screening direction concluded that the proposed development was not EIA development.
4. The Council's Planning Committee considered the application following the appeal being lodged and resolved that had it had the opportunity to determine the application it would have refused permission for six reasons. Those putative reasons included reference to inadequate information in relation to land contamination, inadequate survey information in respect of protected species and the absence of a planning obligation. During the appeal and prior to the conclusion of the hearing further information was submitted to address issues related to land contamination and protected species and a Unilateral Undertaking (UU) planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 was executed and submitted. On this basis the Council confirmed it did not seek to pursue the reasons for refusal related to those matters. I address the planning obligations and matters arising out of that further information below. The sixth reason for refusal, related to highway

- matters, was not pursued by the Council following further information and discussion with the Highway Authority.
5. The remaining substantive issues between the parties related to the design quality of the scheme and the adequacy of infrastructure provision and these form the basis of the main issues set out below.
  6. The Solent is internationally important for its wildlife and three Special Protection Areas (SPAs) have been designated to protect over wintering birds. The Solent Recreational Mitigation Strategy (SRMS) requires contributions from all dwellings built within 5.6 Km of the boundaries of the SPA. The appeal site is located within the 5.6 Km zone of influence of the Solent SPAs and it is not disputed that a contribution is required and indeed such a contribution is secured in the UU.
  7. However, following the Court of Justice of the European Union judgement in the *People over Wind and Peter Sweetman v Coillte Teoranta*, case C-323/17 it is not permissible to take account of measures intended to avoid or reduce harmful effects of the plan or project on a European site at the screening stage under the Habitat Regulations Assessment. The proposed development is not directly connected with or necessary for the management of the Solent SPAs. Given the agreement between the parties that a contribution under the SRMS is required it is accepted and acknowledged that there would be a potential for the proposal to have a significant effect on the interest features of the site through the increased pressure resultant from an increase in the population resulting in increased visitor numbers with the potential for increased disturbance of the over wintering birds. Whilst the SRMS has been developed to mitigate such impacts given the recent judgement of the CJEU this cannot be taken into account at the screening stage and therefore it must be concluded that it is likely the proposal would have a significant effect, either alone or in combination with other developments, through the increased recreational pressure.
  8. The outcome of that conclusion is that an appropriate assessment must be carried out to determine whether or not the development would have an adverse effect on the integrity of the European site. But again given the justification for the required mitigation this is on the basis that there would be a significant effect that requires to be mitigated. The appropriate assessment therefore results in a conclusion that there is a risk of adverse effects on the integrity of the site. However, the HRA process then seeks to consider whether the adverse effects can be mitigated. In this regard there is a published mitigation strategy which has been agreed by various bodies including Natural England, the Statutory Nature Conservation Body. The appellant has provided a UU planning obligation which, among other matters, secures the payment of the required contribution to meet the SRMS and would therefore adequately mitigate the adverse effects that would result from additional recreational pressure on the integrity of the SPAs. There is therefore no bar to development on this basis.
  9. The National Planning Policy Framework at paragraph 177 advises that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined. Given this proposal has

been the subject of appropriate assessment this has implications for the approach to decision making which I return to below in the planning balance.

## **Main Issues**

10. The main issues in this appeal are:

- Whether the proposed development would represent high quality design and contribute towards an attractive, inclusive, safe, well-connected and sustainable community as required by development plan and national policy; and
- Whether the proposed development makes adequate provision for a reasonable proportion of the necessary infrastructure required to support Welborne.

## **Reasons**

### *Background*

11. The statutory development plan for the area comprises the Local Plan Part 1: Core Strategy (CS), the Local Plan Part 2: Development Sites and Policies (DSP) and the Local Plan Part 3: The Welborne Plan (WP). In respect of this appeal the CS and the WP provide the relevant development plan policy framework against which to consider the development.
12. Policy CS13 of the CS provides for a Strategic Development Area north of Fareham to provide for housing and supporting environmental, social and physical infrastructure along with retail and employment floorspace. The aim is for the new community to be as self-contained as possible whilst complementing and supporting the established town centre of Fareham. The policy also sets out high level development principles for the new development.
13. The WP takes forward the strategic development area allocation and sets out the broad type, location, amount and character of the development of Welborne and is provided to guide decision making on future planning applications for the site. The Welborne Design Guidance (WDG) is a supplementary planning document to explain the Council's expectations in the design of Welborne. It builds on policies in the WP and aims to ensure Welborne will be a well-designed development that fits in with the landscape and provides a high quality place to live.
14. Both parties refer to the strategic allocation as a garden village and I understand that Welborne has been identified by the government as a Garden Village which will provide priority access to funding streams and support to assist in progressing the delivery of the 6, 000 homes on the site and the supporting infrastructure.
15. There is an outstanding application under consideration by the Council by Buckland Development Ltd for development of the strategic allocation.
16. The Statement of Common ground accepts that the proposed delivery of housing on the appeal site in advance of the outline planning permission being granted for the wider Welborne Area would, in this case be acceptable and would not prevent the delivery of the overall vision for Welborne and as such is acceptable in principle and as a standalone phase from the wider Welborne project. The proposal, for residential development for the site, is in accordance

with the Strategic Framework Diagram referenced in para 3.50 of the WP which identifies the site for residential development.

17. The appeal site is an existing industrial site occupied by various industrial buildings with the majority of the site laid to open hard standing. It is presently in a relatively low intensity use. There are changes in levels across the site with the eastern boundary of the site, adjacent the A32, being higher than the western boundary, formed by Forest Lane and the southern end of the site, adjacent to existing residential development, being lower than the fields and open countryside that rise to the north of the site.

### *Quality of Design*

18. The National Planning Policy Framework at paragraph 124 clearly advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve and that good design is a key aspect of sustainable development. At paragraph 127 the Framework further advises that decisions should ensure developments will function well, be visually attractive, sympathetic to local character, establish a strong sense of place and optimise the potential of the site to accommodate an appropriate amount and mix of development. Paragraph 130 is clear that account should be taken of local design standards or style guides or supplementary planning documents in reaching conclusions on the design of a scheme, with poor design being refused but design not used by decision makers to object to development if it accords with the expectations of policies.
19. The context within which this development is to come forward is as an early phase of the Welborne Garden Village. It may be seen not to prejudice the wider implementation and delivery of the Garden Village but it is still part of the wider allocation and obtains its in principle acceptance as part of the strategic allocation. The scheme must be considered in the context of the planning framework for Welborne, the strategic allocation, development management policies in the Welborne Plan and, as a material consideration to provide further advice and guidance on those policies, the Welborne Design Guide. The success of the project will for a significant part be dependent on the implementation of a high quality design. As the first proposals to be determined in that context it is imperative the aims and aspirations for the Garden Village are fully realised in all its constituent parts.
20. The overall design considerations of the scheme have a number of facets that interact and contribute to the character and layout of the scheme, including the arrangement of buildings, open space provision, the scale and bulk of buildings, parking areas and the communal garden area.
21. Policy WEL2 in the WP supersedes the high level development principles for Welborne as originally set out in CS13. These include a requirement for each phase to be well designed and incorporate a range of densities and building heights to create a series of attractive places with different and distinctive characters. The WP identifies four character areas including a Woodland Character Area at Figure 4.1. The WDG provides further advice on the expectations and division of the character in these character areas. The appeal site would be located within the 'Woodland Character Area'. In advising on the character of Welborne as a whole the WDG at 2.33 advises that the more sensitive areas of the development are those on the outskirts of the site. In these locations it is suggested development would be expected to be less

intensive and pre-dominantly 2-storey. Page 34 includes design guidance for the Woodland Character Area and indicates residential development should be predominantly 2 storey with occasional 2.5 storey pre dominantly detached and semi-detached with occasional short terraces and a mix of setbacks. The Woodland Character Area should be characterised by tree cover that is a dominant feature of the area, a layout that ensures surrounding woodland is visible from within the site and in particular locations be of a more rural character.

22. The appeal proposals are predominantly formed of short blocks of closely spaced terraces set in formal arrangements and with building heights that incorporate a significant proportion of building heights in excess of 2 storeys. The resultant layout, form and character is one of a more urban or suburban residential estate. The limited separation of spaces between a number of the terraces result in longer runs of building frontages dominating the spaces. The Crescent terrace to the south of the site and the group of housing enclosing the SUDs space to the north form distinctly urban typologies. Similarly the main housing group fronting the large open space with narrow plots and higher building heights, including up to three storeys, dominate the centre of the scheme and produce a very civic appearance.
23. There is an east west pedestrian route through the site which could link to the wider Welborne development and form part of the Green corridor and infrastructure required in the WP. The relationship of this with the large open area in the centre of the site contributes to a strong element of green infrastructure. However, its effectiveness is reduced to some extent by the subdivision from the SUDs area to the north and the children's play area and the constrained access points onto Wickham Road and Forest lane.
24. The large open space and the green route that runs through the site provide the potential for tree planting but given the limited other spaces and dominance of the road through the scheme this would not result in a Woodland Character where tree cover was a dominant feature. The nature of the road alignment and positioning of the blocks would restrict views to the wider areas beyond the site and reduce views to the woodlands beyond to glimpsed views rather than integrated within the overall design and contributing to the importance of woodland in those views.
25. In my view this conflicts with the Councils expectation for the area which would suggest lower intensity development in a more informal layout with a more rural character and could undermine WEL2 which seeks to ensure that development creates a series of attractive places with different and distinctive characters.
26. There are a number of locations where the layout provides flank walls and garden boundaries onto roads conflicting with the advice in the WDG and providing for poor or reduced surveillance of these sections of the site.
27. The northern section of the site is particularly unsuccessful in seeking to address the issues raised by the site. Whilst I acknowledge that the WDG seeks to promote perimeter block development it does not require only such a form of development and that would be inappropriate. This site is constrained is previously developed has significant variations in levels and other factors which may suggest that such an approach is not the only solution. However, many of the principles behind the perimeter block approach including natural

surveillance, defensible space, the separation and definition of public and private spaces are important concepts to retain. With the use of the parking courts many of these respected principles are lost. Much of the parking areas in these locations are poorly over looked are not readily distinguishable as private or public spaces or provide clear demarcation of ownership. They are poorly screened and are somewhat unrelieved unattractive large areas of hardstanding. Whilst it was suggested additional windows could be inserted in the flank walls of properties fronting these spaces to increase overlooking that does not address the basic issue. These windows would in any case at best be secondary windows or not to primary habitable rooms which would do little to improve passive surveillance of the parking areas.

28. These would conflict with WEL6 which requires development, amongst other matters, to provide a layout and design that will help to create safe well-connected neighbourhoods.
29. The small block of flats located at the entrance to the development appears shoehorned into this section of the site and has limited space for its setting or to provide amenity space for future occupiers of the building. The limited space to the building, the scale of the elevations and the proximity of tree planting would result in the southern space being unwelcoming and unattractive as a private amenity space for future occupiers.
30. The general appearance of the entrance to the site is somewhat compromised by the level of activity, limited space around the flat block, the additional private access for the four detached properties combining to produce an intensity of built form and level of activity that contributes to a more urban character for the scheme.
31. Bringing all these matters together I conclude that the proposed development would result in a development with a strong urban character conflicting with the more woodland character area proposed and the generally more informal and lower intensity of development rural character sought for this part of Welborne. This would result in a development which would compromise the expectations for the character and appearance of the area. The layout and design introduces elements that produce areas where surveillance would be poor and amenity provision for future residents was unacceptably constrained. On this basis the proposed development would not represent high quality design and would not contribute towards an attractive, inclusive, safe, well-connected and sustainable community as required by development plan and national policy.

#### *Necessary infrastructure*

32. Welborne as a new settlement which is aiming for the most part to be self-sufficient has been justified and evidenced on the basis of a delivery plan and assessment of the necessary infrastructure it will require to meet its needs. The WP is supported by an Infrastructure Delivery Plan and the extant application for the wider Welborne development is accompanied by an updated Infrastructure delivery plan.
33. The applicant has not submitted such a plan with their application albeit that such documentation is suggested to be appropriate in the WP. The Council have validated the application on the back of the applicant providing a note

- summarising how the development would contribute to the wider infrastructure costs for Welborne and a further note on these matters.
34. It was accepted at the hearing that the Council do not object to the specific costings the appellant has put forward as they have no evidence to challenge those.
  35. I also note that the appellant has drawn attention to the fact there is sufficient capacity in the local primary and secondary schools to meet the demands of the development and that there was sufficient capacity in the local doctors surgeries and dentists.
  36. However the principle of the development is predicated on the site forming part of the wider Welborne development and that as the new Garden Village develops there would be an expectation that the occupants of this development would use the services and facilities in the wider Welborne development and not travel to other areas. It is not unreasonable to expect all parts of the Welborne strategic allocation to make its proportionate contribution to the provision of the necessary infrastructure to support Welborne's future residents.
  37. The appeal site is a previously developed area of industrial land and will require significant decontamination. The decontamination costs form a significant portion of the costs in the appellants note to demonstrate that these are part of their contribution to the necessary infrastructure. However I have no evidence or clarity before me on whether the decontamination costs formed part of the wider Welborne IDP costs and whether the appellant's costs are of a similar scale. Similarly I have no indication as to whether by the appellant decontaminating this site that would reduce, or by how much, the cost that would be borne by the wider Welborne development. In these circumstances there is no clarity on whether there is cross subsidy such that would then justify reductions in other contributions.
  38. I note that the high costs of the development ascribed by the appellant but these appear in many instances to be the normal costs associated with a development of a previously developed site to a standard required by development plan policy. Whilst I acknowledge the higher per unit costs towards these matters as compared to the IDP costs divided across the wider Welborne development that does not address the issue. The evidence before me demonstrates that the appellant does not contribute towards infrastructure of schools, primary health care, extra care housing, community buildings, market square public realm sports facilities etc; indeed all of the social and services necessary to support a thriving community. What the costs provided show are costs associated with decontamination, the provision of green infrastructure, transport, and physical energy and drainage projects. But these are all necessary costs of the development.
  39. Overall, on the basis of the above, I conclude that the development does not make adequate provision for a reasonable proportion of the necessary infrastructure required to support Welborne. The proposal would therefore conflict with policy WEL41 which requires development to be undertaken in accordance with an agreed delivery plan unless there is suitable alternative appropriate infrastructure to adequately service the development.

## **Planning Obligations**

40. The appellant has secured planning obligations through a Unilateral Undertaking under sec 106 of the Town and Country Planning Act 1990. The UU contains six schedules which set out the obligations the owner undertakes to observe and perform.
41. Schedule one contains obligations related to highway works and a travel plan. These ensure that the highway works will be undertaken at the appropriate stage of development and follow the appropriate mechanisms. The travel plan will encourage sustainable travel. These matters are in accordance with policies WEL23 and WEL27 in the WP and are directly related to the development and fairly and reasonably related to the scale of the development.
42. Schedule 2 contains obligations which secure the provision of 22 affordable housing units, 15 as affordable rent and 7 as shared ownership. The obligations address issues including transfer, delivery, stair casing and release. Three wheelchair units are also secured. The provision of 30% of the units as affordable units is in accordance with policy WEL18 of the WP and is therefore fairly and reasonably related in scale and kind to the development.
43. Schedule 3 secures the provision and management of the open space and play area. These are consistent with the requirements of policies WEL29 and WEL35 of the WP and are fairly and reasonably related to the scale and kind of the development.
44. Schedule four secures the financial contribution required for the SRMS. The contributions are not used for the provision of infrastructure and so are not caught by the pooling restrictions under the Community Infrastructure Levy Regulations. The SRMS contributions support the management of the SPAs to mitigate the harmful impact of additional recreational activity on nesting birds/wading birds within the Solent region. The contributions are therefore fairly and reasonably related in scale and kind to the development.
45. Schedule 5 secures public access to the onsite routes to support the wider Welborne development and ensure access to the green corridors and general access through the wider allocation development as it comes forward. The provisions are therefore reasonably and fairly related to the scale and kind of the development.
46. Finally schedule 6 secures the provision and implementation of an Employment and Skills Plan in accordance with policy WEL43 to provide opportunities for local people to be involved in employment and training during construction. This directly relates to the implementation of the development and in part is directed towards the social dimension of sustainable development. The obligation is fairly and reasonable related to the scale and kind of the development.

## **Benefits of the Scheme**

47. The proposed development would provide for some 72 new dwellings in an Authority where the Council accept that it can only provide for between 3.5 years and 4 years of housing land supply. The houses would come forward now and be an early housing opportunity and first delivery from the Welborne allocation which will contribute to the Council's housing delivery target. This is a significant benefit but given the limited number of units I reduce the overall

weight of this factor and afford it moderate weight. Of those new houses the development would make provision for 15 affordable units, secured through the UU. The Council has a significant need for affordable housing but given the limited number of units provided, which is also no more than policy requires, I also attach moderate weight to this benefit.

48. The appellant suggests the remediation of the site is a key benefit of the scheme. Whilst the old industrial, somewhat dilapidated buildings, hard surfacing and previously developed land would be removed and the site brought into a more productive use this would be the case in any redevelopment of the site. On this basis I give this only limited positive weight as a benefit of the scheme.
49. The scheme would result in the moving of the main access on the A32 and removal of any vehicular access through the site between the A32 and Forest Lane. These are matters that would improve highway safety and are minor benefits of the scheme. Again they could be secured with any redevelopment of the site. I afford this limited positive weight.
50. The site would make provision for connection to the foul drainage network which could facilitate surrounding properties also connecting to the foul drainage system reducing the reliance on soakaways. This is a minor benefit of the scheme to which I attributed limited positive weight.
51. The appellant suggests that positive benefit derives from the landscaping and green infrastructure provided on the site. However, this is a necessary requirement to meet policy and ensure the development provides a good standard of amenity for future residents', to protect adjoining occupiers and addresses ecological requirements. It is also necessary to address the woodland character area within which it is proposed. It is not therefore a positive benefit of the scheme.
52. Adjoining the site is Mill House, a grade II listed building. The proposed development would remove existing large industrial structures close to the boundary and improve the setting of the listed building. This is a positive benefit to which I attribute moderate positive weight.
53. Any mitigation measures provided or secured in respect of the scheme are not positive benefits but seek to address and mitigate the impact of the development.
54. There would be economic benefits associated with the development including new homes bonus, CiL payments for which the development would be liable, the additional spend in the local economy during implementation of the development and the additional financial and community support derived from the increased population using services and facilities in the area once the development is occupied. I give this moderate positive weight.

### **Other matters**

55. The Council following the publication of the new Framework have confirmed that their supply of available housing land would be in the range of 3.5 to 4 years supply. The appellant accept that this is a reasonable range for the authority at this point in time. The Council cannot therefore demonstrate a 5 year supply of housing land.

56. The development would remove the existing buildings and hard surfacing from the land and de-contaminate the site. The Council originally provided a putative reason for refusal in respect of land contamination however upon receipt of further information have not continued with any objections to the scheme on that basis. The Council is satisfied that should permission be forthcoming land contamination could satisfactorily be addressed by condition and I have no evidence before me to disagree with those conclusions.
57. Similarly further information including further survey work and a mitigation strategy to address any concerns that may arise in respect of Dormice has been provided. Agreement has been reached between the parties that the most appropriate way forward is to accept that there is a strong likelihood that Dormice are on the site. On this basis the appellant has produce a Dormice mitigation strategy in the event it is demonstrated that they are. The Council, and County Council ecologist, accept that the mitigation strategy would address the effects of the development on Dormice if they were to be identified. On this basis a condition requiring the implementation of the Dormice mitigation strategy in the event Dormice were established to be on the site would be an appropriate way forward.

### **Planning Balance**

58. Given that the development has been subject to appropriate assessment the presumption in favour of sustainable development at paragraph 11 of the Framework does not apply. The proposal is therefore only to be considered on the basis of the section 38(6) balance such that the appeal should be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case I have concluded that the proposal would not be high quality design and would conflict with development plan policies CS13 WEL2 and WEL6. I have also concluded that the proposal would not provide adequate infrastructure contributions and would therefore conflict with WEL42.
59. The Council cannot demonstrate a 5 year housing land supply and therefore the provision of housing including affordable housing is a significant consideration. However I have given this only moderate positive benefit given the scale of the development. I have noted a number of other benefits associated with the scheme and take account of the weight I have ascribed to them above.
60. The Framework advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Given the conflict with the development plan and the advice on design in the Framework the other considerations do not indicate that a decision otherwise is appropriate. Albeit there is a shortfall in the housing land supply this is the first development in a Garden Village where design will be fundamental to its success and the shortfall of housing does not mean housing at any cost.

### **Overall conclusion**

61. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Simon Ricketts	Town Legal LLP
Gavin Hall	Savills
Richard Powell	Latchmoor Properties
Bruce Slattery	Jacobs Engineering
Jonathan Moore	MH Architects
Andrew Linfoot	Jacobs Engineering

### FOR THE LOCAL PLANNING AUTHORITY:

Luke Simpson	Adams Hendry
Alex Russell	Southampton & Fareham Legal Services Partnership
Justin Leach	LDA Design
Valerie Conway	VE Consulting
Maral Miri	Hampshire County Council

### INTERESTED PERSONS:

Mrs Brenda Clapperton	Secretary of Fareham Society
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### DOCUMENTS SUBMITTED DURING HEARING

- 1 Draft Unilateral Undertaking and summary Schedule submitted by appellant
  - 2 Comments on Revised National Planning Policy Framework submitted by Council
  - 3 Comments on revised national Planning Policy Framework, summary of outstanding issues and Dormouse mitigation strategy submitted by appellant
  - 4 Copy of e-mail from Council to Pins Case officer dated 10 August including NPPF statement, pre-application proposal, delivery trajectory for Welborne The Executive Leaders Announcement on HLS and extracts of Draft Planning Practice Guidance
  - 5 Copy of Judgement of European Court C323/17 People Over Wind and Peter Sweetman v Coillte Teoranta submitted by Council
  6. Copy of updated planning condition 2 to update plan reference numbers and copies of relevant plans (latest revisions)
  - 7 Copy of extract from Welborne Infrastructure Delivery Plan related to New Homes Bonus submitted by appellant
  - 8 Copy of various amended conditions submitted by appellant
  - 9 Original of signed, sealed and dated Unilateral Undertaking
  - 10 Appellants application for Costs
  - 11 Council's application for Costs.
- END



## Appeal Decision

Inquiry Held on 6 - 9 November 2018

Site visit made on 9 November 2018

**by Kenneth Stone BSc Hons DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12<sup>th</sup> April 2019**

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**Appeal Ref: APP/A1720/W/18/3199119**

**Land east of Posbrook Lane, Titchfield, Fareham, Hampshire PO14 4EZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Foreman Homes Ltd against the decision of Fareham Borough Council.
  - The application Ref P/17/0681/OA, dated 9 June 2017, was refused by notice dated 14 December 2017.
  - The development proposed is described as an 'Outline Planning Application for Scout Hut, up to 150 Dwellings, Community Garden, associated landscaping, amenity areas and means of access from Posbrook Lane in addition to the provision of 58,000 square metres of community green space'.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application was submitted in outline with all matters reserved for future consideration with the exception of access. The access details are shown on the plan 'Proposed Site Access 16-314/003E' which along with the 'Site Location Plan 16.092.01E' are the plans that describe the proposals. An illustrative plan was submitted and the latest iteration was 16.092.02F. However, this was for illustrative purposes only to demonstrate one way in which the site could be developed but does not form part of the formal details of the application.
3. Prior to the commencement of the Inquiry the Council and the appellant entered into a Statement of Common Ground. The original application had been submitted with the description of development in the banner heading above. The parties agreed that there was no requirement for the Scout Hut and removed this from the illustrative master plan and amended the description of development to reflect the amended proposed development.
4. I am satisfied that the proposed alteration to the scheme, which does not amend the red line boundary and makes only a minor adjustment to the overall scheme, is not material. I am satisfied that there would be no material prejudice to parties who would have wished to comment on the proposals and that the amended illustrative plan was available as part of the appeal documents and therefore available for parties to view and comment on. I have therefore considered the appeal on the basis of the amended description which

read as follows: 'Outline application for up to 150 dwellings, community garden, associated landscaping, amenity areas and a means of access from Posbrook Lane.'

5. In the Statement of Common Ground the Council and the Appellant agree that an Appropriate Assessment would be required in the light of The People Over Wind Judgement<sup>1</sup>. During the Inquiry a shadow Habitats Regulations Assessment document was submitted (APP4) to enable an Appropriate Assessment to be made. In this regard I consulted with Natural England to ensure that I had the relevant information before me if such an assessment were to be required. The main parties were given the opportunity to comment on Natural England's consultation response.
6. By way of an e-mailed letter dated 5 November 2018 the Secretary of State notified the appellant, pursuant to regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, that further information was required. The further information was publicised on 4 January 2019, a period of 31 days was given for the receipt of comments and the parties were given a period following the end of the publicity period to collate and comment on the matters raised.
7. I have had regard to all the Environmental Information submitted with the appeal including the original Environmental Statement, the Additional Information, the Shadow Habitats Regulations Assessment, the further responses and the parties' comments in reaching my conclusions on this appeal.
8. The Council has drawn my attention to a recent appeal decision, at Old Street, APP/A1720/W/18/3200409, which had been published since the Inquiry was conducted and in which similar issues were considered in respect of the Meon Valley. The parties were given the opportunity to comment on this decision.
9. The Government published a revised National Planning Policy Framework (the Framework), and updated guidance on how to assess housing needs as well as results of the Housing Delivery Test along with a technical note on 19 February 2019. The parties were given the opportunity to comment on how these may affect their respective cases. I have had regard to this information and the comments of the parties in reaching my decision.
10. I closed the Inquiry in writing on 19 March 2019.

### **Main Issues**

11. In the Statement of Common Ground the appellant and Council agree that with the completion of a satisfactory legal agreement reasons for refusal e through to l would be addressed. No objections to the Unilateral Undertaking were raised by the Council and these matters were not contested at the Inquiry. It was also agreed in the Statement of Common Ground that reason for refusal d could be overcome by the imposition of an appropriately worded condition, and I see no reason why this would not be appropriate.
12. On the basis of the above the remaining outstanding matters and the main issues in this appeal are:

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<sup>1</sup> The Court of Justice of the European Union judgement in the People over Wind and Peter Sweetman v Coillte Teoranta, case C-323/17

- The effect of the proposed development on the character and appearance of the area, including having regard to whether or not the site is a valued landscape and the effect on the strategic gap;
- The effect of the proposed development on the setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II\* listed buildings; and
- The effect of the proposed development on Best and Most Versatile Agricultural Land (BMVAL).

## Reasons

13. The development plan for the area includes The Local Plan Part 1: Core Strategy (2011 -2026) (LPP1), The Local Plan Part 2: Development Sites & Policies (2015) (LPP2) and The Local Plan Part 3: Welbourne Plan (2015) (LPP3).
14. LPP3 specifically addresses a new settlement at Welbourne and does not include policies that bear directly on the effects of the development the subject of this appeal. Its relevance is however material in the context of the wider housing land supply issues in the area.
15. In terms of LPP1 policy CS14 seeks to control development outside defined settlement boundaries seeking to resist proposals which would adversely affect its landscape character and function. While policy CS22 advises land within strategic gaps will be treated as countryside and development proposals will not be permitted where it affects the integrity of the gap and the physical and visual separation of settlements.
16. In LPP2 Policy DSP6 further advises in respect of residential development outside of defined urban settlement boundaries that it should avoid a detrimental impact on the character or landscape of the surrounding area. DSP5 addresses the protection and enhancement of the historic environment. In considering the impacts of proposals that affect designated heritage assets it advises the Council will give great weight to their conservation and that any harm or loss will require clear and convincing justification, reflecting the statutory and national policy positions.
17. Policy DSP40 in LPP2 includes a contingency position where the Council does not have a 5 year supply of housing land. It is common ground between the parties that the Council does not have a 5 year supply of land for housing albeit the extent, length of time this may persist and consequences are disputed. I address these latter matters further below however insofar as the parties agree that the Council cannot demonstrate a five year supply of housing land the contingency position in policy DSP40 is engaged and this advises that additional sites outside the urban area boundary may be permitted where certain criteria are met.
18. An emerging draft Local Plan, which in due course is anticipated to replace LPP1 and LPP2, was launched for consultation in autumn of 2017 but has now been withdrawn. At the time of the Inquiry I was informed that a further review is to take place following revisions to the National Planning Policy Framework and the Government's latest consultation in respect of housing figures. The Council propose to consult on issues and options relevant to the progression of the Council's new development strategy following the outcome

of the Government's recent consultation. Consultation on a new draft Local Plan is not now anticipated until the end of 2019.

19. The Titchfield Neighbourhood Plan 2011 – 2036 (TNP) is also emerging; it was published for consultation in July 2018 with a further draft submitted to the Council for a compliance check, in October 2018, prior to consultation as the submission draft. At the Inquiry it was confirmed that further documents were submitted to the Council and that the TNP complied with the Statutory requirements. The Council undertook Consultation on the submission draft between November 2018 and January 2019 but at this point in time the plan has not yet been submitted for independent examination. The TNP includes a plan identifying the strategic gap, the Meon gap, and the Defined Urban Settlement Boundary (DUSB) as well as housing policies which review the DUSB (DUSB 1) and address windfall sites (H1), affordable housing (H2), Local Need (H3) and Development Design (H4).

*Character and Appearance, including Valued Landscape and Strategic Gap*

20. The appeal site is an area of some 6.6 ha of open grazing field on the east side of Posbrook Lane. The land gently slopes from its north-west corner towards its eastern edge. The site is segregated from Posbrook Lane by a hedgerow but for the most part the site is open with little demarking fences, trees or hedge rows. There is some evidence of a previous subdivision of the site on a modern fence line however only limited post foundations remain and generally the whole site has a reasonably consistent grazed grassland appearance.
21. To the north, the appeal site abuts the settlement edge of Titchfield at an estate called Bellfield. The urban edge is open and harsh with little by way of softening landscaping. Towards the south-western corner the site abuts a cluster of buildings that includes the farmstead of Posbrook farm and which includes two Grade II\* listed buildings (the Farmhouse and the southern barn). The boundary between these is screened for the most part by a substantial tree and hedgerow belt. Beyond these and towards the south are open agricultural fields. To the east the site slopes down to the Titchfield Canal, valley floor and River Meon beyond.
22. The Meon Valley is a major landscape feature that runs through the Borough and slices through the coastal plain. The parties agree that the site is located within the Lower Meon Valley Character Area but disagree as to the finer grain character type as detailed in the 1996 and 2017 Fareham Landscape Assessments. The appellant points to the 2017 Assessment identifying the western part of the appeal site as being identified as open coastal plain: Fringe Character with a small portion of the site being open valley side. The Council contend that the whole site is more appropriately identified as open valley side.
23. The difference in opinion and identification relates to the influence of the urban settlement boundary, the topography of the site and other landscape features in the surroundings. The fact that the 2017 classification is based on somewhat historic data does call into question the accuracy at the finer grain. There is some evidence in terms of photographs and on site that the site was subdivided and that there may have been different practices implemented which resulted in parts of the site having a different appearance and therefore leading to a different classification at that stage. On site I was firmly of the view that the site was of an open character with little in the way of field boundaries, hedges or other landscape features to different areas of the site.

Whilst there was a break in the slope this was minimal and did not change the characterisation from a gentle slope. There were minor variations across the site and I was not persuaded that this was such a feature that would change the character type of the site. Finally, in the context of the urban settlement edge influence it is undeniable that it is there. There is a lack of screening and there is a harsh and readily visible urban edge. This however is a distinct break with the open rural field which then flows to the open agricultural fields beyond the farmstead cluster and the lower valley floor below. In my view in the wider context the urban influence is given too much weight in the appellant's assessment and in association with the sub division of the site into smaller fields adds to the reduced weight given to the effect of the proposed development.

24. The proposed development would result in the provision of a suburban housing estate of up to 150 units on an open field that would substantively change the character of the field. The field appears, when looking south and east, as part of the broader landscape compartment and part of the Lower Meon Valley landscape. Views back towards the site would result in the perception of the intrusion of housing further into the valley and valley sides to the detriment of the character of the valley. The characteristics of the site are consistent with those of the Meon Valley and representative of the open valley side which includes sloping landform, a lack of woodland with views across the valley floor and is generally pastoral with some intrusive influences of roads or built development.
25. The visual effects of the development would be evident from a number of public footpaths both through and surrounding the appeal site as well as along Posbrook Lane, to the south and from the valley floor and opposite valley side. The further encroachment of built development into the countryside would detract from the rural appearance of the area.
26. The potential for landscaping to screen and reduce the visual effects and to a certain extent provide some positive contribution was advanced by the appellant. Whilst additional landscaping along the proposed urban edge would produce an edge that was more screened and in effect a softer edge than present is undeniable and would of itself improve the appearance of the existing urban edge. However, this needs to be weighed against the loss of the open field separation of elements of built development and the creeping urbanisation of the area. Whilst planting would assist in reducing the direct line of sight of houses in the longer term there would still be effects from noise, activity, illumination in the evening along with the localised views that would inevitably and substantively change.
27. I would characterise the landscape and visual effects as substantial and harmful in the short to medium term, albeit this would reduce in the longer term, I would still view the adverse effect as significant.
28. There is some dispute as to whether the site is a valued landscape. The Lower Meon Valley is a significant landscape feature and both parties assessed the site against the box 5.1 criteria in Guidelines for Landscape and Visual Impact Assessment. In this context it is a reasonable conclusion that both parties accept that the Lower Meon Valley has attributes that are above the ordinary. There is some debate as to whether the appeal site contributes to these or is part of that as a valued landscape. On the basis of the evidence before me I

have no difficulty in accepting that the Lower Meon Valley is a valued landscape in the context of the Framework and this is a conclusion consistent with my colleague in the Old Road decision. From my visit to the site and the evidence presented to me I am of the view that the appeal site shares a number of those attributes including the nature of the rural landscape and topography, its scenic quality and that it is representative of the valley sides character type. The site does form part of the broad visual envelope of the Lower Meon valley and part of the landscape compartment and therefore should be considered as part of the valued landscape.

29. Turning to the issue of the strategic gap. The appeal site is located in the Meon Valley strategic gap. The purpose of the strategic gap as identified in policy CS22 is to prevent development that significantly affects the integrity of the gap and the physical and visual separation of settlements. Whilst the Council sought to broaden this out to include the setting of settlements that is not how the development plan policy or indeed its policy justification is written. This states the gaps help to define and maintain the separate identity of individual settlements and are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green corridors. To go beyond these factors in assessing the development against policy would be introducing tests that are not within the development plan.
30. The proposed scheme would extend the urban edge of Titchfield further into the gap than it presently is. There would however be no perception of coalescence or indeed any visual reduction of the separate settlements (I do not see the cluster of buildings as a separate settlement in this context). There would be no demonstrable reduction in the physical separation and the gap's integrity would not be significantly affected. Whilst there would be a minor outward extension in the context of the settlement pattern and separation of settlements the proposed development would be minor and would not result in a significant effect.
31. Overall for the reasons given above I conclude that the proposed development would result in material harm to the character and appearance of the area. This would result in harm to a valued landscape. There would however be no significant effect on the strategic Meon Gap. Consequently, the proposed development would conflict with policies CS14 and DSP6 which seek to protect the character and appearance of the area of land outside the defined urban settlement boundary but would not conflict with policy CS22.

*Setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II\* listed buildings*

32. South of Titchfield on the east side of Posbrook Lane there is an historic farmstead that includes the listed buildings of Great Posbrook and the southern barn at great Posbrook farm. Both of these are Grade II\* which puts them in the top 8% or so of listed buildings in the Country. They are a significant and invaluable resource.
33. The list description for Great Posbrook identifies it as a C16 house altered in the C19 with evidence of elements of C17 and C18 interior details. There is some question mark over the precise dating of the origins of the building with the Council pointing to evidence that it dates from early C17. While the alterations have created two parallel ranges the earlier T shaped form is unusual and is of particular architectural importance because of its rarity. The

main parties' experts agree that the building is of considerable historic interest due to its fabric, architectural composition and features.

34. The list description for the southern barn identifies it as a late medieval aisled barn. However, the Council point to more recent dendrochronology which indicates that it is likely to be late C16 or early C17 with the eastern end being C18. It is a substantial historic barn with considerable vernacular architectural interest being a good and relatively rare example of a high status English barn. Its size and scale demonstrating its association with a high status farm.
35. The listings make reference to other buildings in the cluster forming the farmstead including a store shed, small barn, cartshed and pigsties but note that these are of local interest only. The main listed buildings together with the buildings of local interest form an early farmstead with a manorial farmhouse, significant barn and numerous other buildings. There have been recent interventions as part of enabling development which resulted in the demolition of modern farm buildings the conversion of some of the historic buildings and the construction of new buildings to provide for additional residential occupation on the site. Much of the new building footprint was related to original buildings in an attempt to reinstate the historic arrangement of farm buildings in a courtyard pattern.
36. The significance of the listed buildings and the farmstead derives from the age, architectural quality, size, scale and relationship of buildings. There is a functional relationship with the adjoining land which was likely farmed as part of the farm holding and reasonable evidence to suggest that there may be an associative link with Titchfield Abbey which adds and contributes to this significance. There has been some more recent and modern infill development and recent housing within the farmstead adjacent and in the wider setting which has a negative impact and detracts from the significance. The wider setting of the site within a rural landscape assists in understanding the scale and status of the land holding, sets the farmstead in an appropriate open rural agricultural setting and separates it from the close by settlement of Titchfield. This contributes to the overall significance of these assets.
37. The proximity of the settlement of Titchfield and the exposed urban edge already have a negative impact on the wider setting of the heritage assets bringing suburban development close to the farmstead and reducing the wider rural hinterland.
38. The appeal site is formed by open land that wraps around the northern and eastern edge of the cluster of buildings within which the farmstead is set. It lies between the southern edge of Titchfield and the northern edge of the cluster of buildings and abuts the northern and eastern boundary of the farmhouse.
39. It is common ground that the proposals would not result in physical alterations to the listed buildings. There would be no loss of historic fabric or alterations to the architectural quality or form of the actual buildings. Similarly there would be no direct alteration of the farmstead.
40. Both parties also agree that the proposal would be located within the setting of the listed buildings and the farmstead. There is also agreement that the proposal would result in harm to the setting of the listed buildings by virtue of built development being closer to the buildings and reducing the rural setting of the buildings. Whilst both parties accept that the harm would be less than

substantial in terms of the Framework, the dispute arises in respect of the level of that harm. The appellant broadly contends that there are limited aspects where the effect would be perceived or experienced and with appropriate landscaping the effect would be reduced over time such that it would fall at the bottom end of the spectrum of less than substantial harm, albeit acknowledging that some harm would be occasioned. The Council on the other hand would put the harm more to the middle of the range that would be less than substantial and contend there are a number of areas where the perception would be significant, that the landscaping may reduce the effect over time, but not remove it, that the noise, activity and illumination associated with a suburban housing estate would further add to that impact and that the effect of changing that land from open rural land to suburban housing would fundamentally alter the setting and obliterate some of the functional and associative links with the adjoining land, albeit different degrees of weight were ascribed to the various elements of harm.

41. There is no dispute that the site would result in the introduction of housing on the area of land adjacent and bordering the farmstead and main farmhouse. This would bring the settlement of Titchfield up to the cluster of buildings and in effect subsume that once separate element into the broader extent of the settlement. This would reduce the connection of the existing farmstead and listed buildings to the rural hinterland and obscure the separation from the nearby settlement. The character of that change would be noticeable and harmful. It would be perceived when travelling along Posbrook Lane when leaving or entering the village and would be readily appreciated from Bellfield and the adjacent existing settlement edge. There are also public footpaths running through the land. These would be both static and kinetic views when moving along and between the various views. This would be a significant and fundamental change.
42. When viewed from the south, along Posbrook Lane and the public footpaths, travelling towards the farmstead and Titchfield the size and scale of the barn are fully appreciated, there are views available of the manorial farmhouse within these views and together the site is recognisable as a distinct farmstead. Whilst the urban edge of Titchfield is also visible it is appreciated that there is a degree of separation. The proposed development would intrude into these views and in the short to medium term would be readily distinguishable as suburban housing. In the longer-term landscaping may reduce this negative effect by the introduction of a woodland feature at its edge, which the appellant argues is reflective of the historic landscape pattern in the area. However, this would introduce a sense of enclosure around the farmstead and listed buildings that would detach them from the rural hinterland and reduce that historic functional connection with the adjoining open land. Whilst there is evidence of small wooded areas in the historic mapping these were freestanding isolated features and not so closely related to areas of built development. The point of the historic pattern in the area is the farmstead with open land around that was once farmed by the manorial farm and which would not have included such features in such proximity to the main farmstead.
43. There would also be views of the relationship between the farmhouse and the proposed development in views on the public paths to the east. Again, these would be significant and harmful in the short to medium term. There may be some reduction in that harm as landscaping matures but even with dense planting and the softening of the existing urban edge it will be an undeniable

fact that suburban development has been undertaken and that there is no separation between the settlement of Titchfield and the historic farmstead including the listed buildings.

44. For the reasons given above I conclude that there would be harm to the setting of the listed buildings and historic farmstead. I would characterise that harm as less than substantial as this would not obliterate the significance of these historic assets. The proposal would however have an adverse and harmful effect on the setting of these assets which would affect their significance given the contribution that the setting makes to that significance. The urbanisation of the remaining area that separates the farmstead and listed buildings from the settlement is significant and whilst the rural hinterland remains to the south and west the dislocation from the existing built up area is an important and fundamental component of that setting that would be lost as a result of the development. The effect is therefore significant and would not in my view be at the lower end of the less than substantial scale as contended by the appellant but more in line with that suggested by the Council. The proposal would therefore conflict with development plan policy DSP5 which seeks the protection and enhancement of heritage assets and is consistent with national policy.
45. These are two Grade II\* listed buildings and the Framework advises that great weight should be given to a designated heritage asset's conservation, any harm should require clear and convincing justification and assets should be conserved in a manner appropriate to their significance. I also have regard to my statutory duty in respect of listed buildings and their setting. The courts have also held that any harm to a listed building or its setting is to be given considerable importance and weight. These matters are reflected in my planning balance below, which includes the Framework's 196 balance.

*Best and Most Versatile Agricultural Land*

46. The appellant undertook a survey of agricultural land and this assessment is provided in appendix SB3 of Mr Brown's proof. This identifies the limited amount of Grade 3a land (4.1 Ha) that would be affected by the development and sets this in the context of Fareham. In my view this does not trigger the sequential test in the Framework footnote 53 as significant development.
47. It is accepted that whilst there is a loss of BMVAL and that this is a negative to be weighed against the scheme it would not of itself amount to such that would justify the dismissal of the appeal. This is a point that was not refuted by the Council who accepted that it may not justify dismissal but should be weighed as a negative factor in the overall balance against the development.
48. I have no substantive evidence to depart from those views and the approach adopted is consistent with that of a colleague in an appeal at Cranleigh Road (APP/A1720/W/16/3156344).
49. The appellant's report concluded that given the grade of land, the small scale and the overall comparative effect on such land in Fareham, whilst it is a negative, it should be afforded no more than limited weight. I concur with that assessment for the views given and therefore ascribe this loss limited weight in my overall planning balance.

## **Other Matters**

50. The Council and appellant agree that the Council cannot demonstrate a 5 year housing land supply. Time was spent at the Inquiry considering the extent of the shortfall based on, amongst other matters, the correct buffer and the correct household projection base date to use. The publication of the Housing Delivery Test results confirmed that Fareham is a 5% buffer Authority. The government also confirmed that it is the 2014 based household projections that should be used as the basis for calculation of the five-year requirement under the standard method. On this basis both parties agree that the minimum five-year requirement would be 2,856 in the period 2018 to 2023.
51. The updated position of the parties is thus a 3.08 years supply taking the appellants position or a 4.36 years supply if the Council's position were to be adopted. I have been provided with further supply evidence in relation to the Old Street Inquiry which calls into question some of the supply side dwellings included in the Council's figures which were permitted since April 2018. Excluding these the appellant suggests the Council's figures would drop to 4.08 years supply.
52. Whichever figures are adopted it is clear that the Council cannot identify a five-year supply of available housing land and that the shortfall is significant. The provision of additional housing in an area where there is a significant housing shortfall in my view translates into a significant positive benefit for the scheme in terms of the overall planning balance.
53. The appeal site is located where there is potential for a significant effect on a number of European designated wildlife sites which comprise Special Areas of Conservation (SACs), Special Protection Areas (SPAs) potential Special Protection Areas (pSPAs) and Ramsar sites. The proposal has been subject to Habitats Regulation Assessment and a shadow Appropriate Assessment process by the appellant. Given the requirement for further publication of environmental information in association with the Environmental Statement consultation was undertaken with Natural England as the Nature Conservation Body to ensure there was no further procedural or administrative delay at the end of the process. However, given the conclusion of my assessment of the effect of the development on the wider landscape and the designated heritage assets I am not minded to allow the appeal. On this basis an Appropriate Assessment does not need to be carried out, as it is only in circumstances where I am minded to grant consent that such an assessment is required to be undertaken. Moreover, in the interim the Framework, paragraph 177 has been amended to advise that it is not the requirement to conduct Appropriate Assessment but the conclusion that following that assessment there is an identified likely significant effect on a habitats site where the presumption in favour of sustainable development does not apply. In these circumstances this matter does not therefore affect the approach to my planning balance.

## **Benefits of the Scheme**

54. As noted above the provision of housing in an Authority area where the Council cannot identify a five-year housing supply is a significant benefit of the scheme. The Statement of Common Ground signed by the parties makes it clear that there is a significant need for affordable housing. The provision of 40% of the total number of units provided as affordable housing, secured

through the planning obligation, is therefore also a significant positive benefit of the scheme.

55. The appellant contends that there would be between 360 and 465 direct, indirect and induced jobs created by construction. It is further contended that there would be an on-going £4.1m gross expenditure per annum from future residents. It is further contended that the landscaping and ecological mitigation would improve the appearance of the harsh urban edge currently created by Bellfield. These are benefits that accrue from this development and are therefore reasonable to add as positive contributions in the planning balance. They are of a scale which reflects the scale of the development.
56. For these reasons the social benefits from additional housing and affordable housing are of significant positive weight, the economic benefits are of moderate positive weight, and the environmental benefits are of limited positive weight.

### **Planning Obligation**

57. A completed Unilateral Undertaking (UU) dated 8 November was submitted to the Inquiry before the conclusion of it sitting. The UU secures matters related to transport including the site access, travel plan and construction traffic management as well as a contribution towards sustainable transport. The UU also secures public open space provisions, including contributions; environmental and habitat obligations, including commuted maintenance and disturbance contributions and the transfer of a bird conservation area; an education contribution and obligations to protect or provide on site routes for the public. These are in effect mitigation measures or matters directly related to the development and do not amount to positive benefits.
58. The appeal is to be dismissed on other substantive issues and whilst an obligation has been submitted, it is not necessary for me to look at it in detail, given that the proposal is unacceptable for other reasons, except insofar as it addresses affordable housing.
59. In respect of affordable housing the UU secures 40% of the housing as affordable units with the mix, tenure and location controlled by the undertaking. I have already identified this as a benefit of the scheme which will be taken into account in the planning balance.

### **Planning balance**

60. I have concluded that the proposed development would result in material harm to the significance of two Grade II\* listed buildings through development in the setting of those buildings. This harm is in my view less than substantial harm in the terms of the Framework a position also adopted by both main parties. Paragraph 196 of the Framework advises in such circumstances that this should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.
61. I have identified the public benefits of the scheme above and these include the provision of additional housing in an authority where there is not a five year supply of housing land and the provision of affordable housing in an area where there is a significant need. I give these matters significant weight. Added to these would be the additional jobs and expenditure in the locality arising from construction activity and following completion of the development. Given the

scale of development these would not amount to small figures and I have ascribed this moderate weight. The proposed landscaping and biodiversity enhancements are a balance and required in the context of also providing a degree of mitigation I therefore only ascribe these limited positive weight.

62. The Framework makes it clear that when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Furthermore it advises that any harm to the significance of a designated heritage asset should require clear and convincing justification. There is a statutory duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. The courts have interpreted this to mean that considerable importance and weight must be given to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise in planning decisions.
63. Heritage assets are an irreplaceable resource and they should be conserved in a manner appropriate to their significance. The Farm House and Barn at Great Posbrook are both Grade II\* and therefore are assets of the highest significance. The development of a substantial housing estate in the rural setting of these listed buildings, and farmstead of which they form part, would materially alter the relationship of the listed buildings and farmstead to the nearby village and wider rural hinterland. This would merge the existing distinct and separated grouping of buildings with the expanding village removing that degree of separation and obscuring the historic relationship with the village and wider countryside. I would not characterise this less than substantial harm as of such limited effect as 'at the lower end' within that spectrum as suggested by the appellant. Indeed, the setting contributes to the significance of these listed buildings and their appreciation from both distinct view points and kinetic views. The negative effect would have a measurable and noticeable effect on the existing physical relationships of development in the area and thereby the understanding of the historic development of those over time. The understanding of the high status nature of the house and barn, and their significance, is derived in part from an appreciation of the separation from the village, their setting within the wider agricultural and rural hinterland as well as their size, scale, architectural quality and relationship of the buildings to each other and the surrounding development.
64. On the basis of the above I conclude that the less than substantial harm I have identified, and to which I give considerable importance and weight, is not outweighed by the significant public benefits of the scheme. On this basis I conclude that the scheme should be resisted. As the scheme fails the paragraph 196 test this would disengage the paragraph 11 d tilted balance that would otherwise have been in play given the lack of a five-year supply of housing land.
65. The scheme would be subject to the requirement to carry out an Appropriate Assessment under the Habitats Regulations if I were minded to allow the appeal. At the time of submission of the appeal Paragraph 177 of the Framework required that the presumption in favour of sustainable development, in paragraph 11, would not apply where an Appropriate Assessment was required to be carried out. The latest iteration of the Framework has amended paragraph 177 to only disengage the presumption in favour of sustainable development where the development is likely to have a

significant effect on a habitats site. If an Appropriate Assessment has concluded the development would not adversely affect the integrity of the habitats site the presumption would not be disengaged. However, given my conclusions in respect of the impact on heritage assets and the other harms I have identified I am not minded to allow the appeal and therefore I do not need to carry out an Appropriate Assessment.

66. Whilst the presumption in favour of sustainable development is not disengaged by virtue of paragraph 177 of the Framework, paragraph 11 d, the so called 'tilted balance', is disengaged by virtue of my conclusions in relation to the effect on the heritage assets and the application of 11 d i. The proposal therefore is to be considered in the context of a straight balance. Section 38(6) requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposal would result in material harm to the character and appearance of the area, which is a valued landscape, to the setting of two Grade II\* listed buildings and a minor adverse effect on best and most versatile agricultural land in the area. On this basis the proposal would conflict with policy CS14 in the LPP1 and DSP5, DSP6 and DSP40 in the LPP2.
67. The Authority cannot demonstrate a 5 year supply of housing land and policies which restrict housing development through such matters as settlement boundaries and gaps are out of date. They do not provide for the necessary housing to make provision for adequate housing in the area. However, those policies, which include CS14, CS22 and DSP6 do seek to protect the countryside and fulfil a purpose that is consistent with the Framework. The Council is seeking to address the shortfall and is making positive steps in that regard albeit there is dispute as to how successful that is. Nevertheless matters are moving forward and although there is still an outstanding shortfall, which even if I accept is as great as suggested by the appellant, is improving on historic figures and there appears to be greater opportunities for this situation to be improved further. I accept that Welbourne may well not be moving at the pace that has previously been suggested and not as quickly as the Council would suggest, but it is still moving forward and with a significant complex development of this nature matters will take time but once milestones are reached momentum is likely to quicken. Of particular relevance here is the determination of the extant application, which remains undetermined but continues to move forward. On the basis of the information before me the determination of this would be in the spring or middle of this year. Given the above I do not afford these particular policies the full weight of the development plan but I still accept that they have significant weight and the conflict with those policies that I have identified above still attracts significant weight in my planning balance.
68. I note that policy DSP5 reiterates national policy and reflects the statutory duty and is therefore accorded full weight and conflict with it, as I have found in this regard, is afforded substantial weight. 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. In the context of the harms I have identified which relate to landscape, heritage assets and best and most versatile agricultural land these result in conflicts with specific criteria in policy DSP40 for the reasons given above in respect of those matters and therefore there is conflict with the policy. These

are two significant policies where weight has not been reduced and the proposal when considered in the round is not in accordance with the development plan taken as a whole.

69. The ecological provisions payments and additional bird sanctuary are primarily mitigation requirements resultant from the proposed development and its likely potential effects and do not therefore substantively add a positive contribution to the overall balance.
70. The impact on the significance of the Grade II\* listed buildings is not outweighed by the public benefits of the scheme and therefore the additional harms related to landscape and BMVAL only add further to the weight against the proposal. The advice in the Framework supports the conclusions to resist the proposal. There are therefore no material considerations that indicate that a decision other than in accordance with the development plan would be appropriate.

**Overall conclusion**

71. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR



DOCUMENTS SUBMITTED AT INQUIRY BY APPELLANT

- APP1 Housing Land Supply Statement of Common Ground.
- APP2 Press Release dated 18 October 2018 from Fareham Borough Council.
- APP3 Appeal Decision letter APP/W3520/W/18/3194926.
- APP4 Habitats Regulations Assessment Screening & Shadow Appropriate Assessment prepared by CSA Environmental.
- APP5 Unilateral Undertaking dated 8 November 2018.
- APP6 Bundle of three Committee reports (P/17/1317/OA, P/18/0235/FP and P/18/0484/FP) confirming the Council's approach to Policy DSP40.
- APP7 Additional suggested conditions.
- APP8 Letter from Hampshire and Isle of Wight Wildlife Trust confirming their agreement to take on the land secured as the Bird Conservation Area in the Unilateral Undertaking.
- APP9 Closing submissions on behalf of the appellant.

DOCUMENTS SUBMITTED AT INQUIRY BY LOCAL PLANNING AUTHORITY

- LPA1 List of Appearances on behalf of the Council
- LPA2 Updated extract from 'The Buildings of England Hampshire: South', appendix 14b to Ms Markham's proof of evidence.
- LPA3 Conservation Area Appraisal and Management Strategy: Titchfield Abbey, Fareham Borough Council adopted sept 2013 – substitution for Core Document F11.
- LPA4 Appeal Decision letter APP/W1715/W/17/3173253.
- LPA5 Copy of Policies 1CO and 2CO from the Eastleigh Borough Local Plan.
- LPA6 Announcement from the Leader of Fareham Borough Council dated 5 November 2018.
- LPA7 S106 Obligations Justification Statement.
- LPA8 Opening submissions on behalf of the Council.
- LPA9 List of documents to be referred to during Evidence in Chief of Philip Brshaw.
- LPA10 List of documents to be referred to during Evidence in Chief of Lucy Markham.
- LPA11 Draft schedule of conditions.
- LPA12 e-mail from Strategic Development Officer Children's Services Department Hampshire County Council dated 8 November 2018.
- LPA13 Plan of route and points from which to view the site during the appeal site visit.
- LPA14 Closing submissions on behalf of the appellant.

DOCUMENTS SUBMITTED AT INQUIRY BY TITCHFIELD NEIGHBOURHOOD FORUM

- TNF1 Opening statement on behalf of Titchfield neighbourhood Forum
- TNF2 Email exchange with appellant regarding drainage dated 6 November including various attachments
- TNF3 List of documents referred to in Evidence in Chief of Mr Phelan
- TNF4 Closing Statement on behalf of Titchfeild neighbourhood Forum

DOCUMENTS SUBMITTED AT INQUIRY BY THIRD PARTIES

INQ1 Speaking note from Mr Girdler  
INQ2 Letter read out by Mr Marshal on behalf of The Fareham Society  
INQ3 Speaking note from Mr Hutcinson

DOCUMENTS SUBMITTED AFTER INQUIRY

PID1 Additional Environmental Information submitted by appellant under cover of letter dated 14 December 2018.  
PID2 Copy of Press notice of publication of Additional Environmental Information.  
PID3 Comments on Additional Environmental Information by Titchfield neighbourhood Forum.  
PID4 Comments on Additional Environmental Information by Fareham Borough Council.  
PID5 'Old Street' Appeal decision APP/A1720/W/18/3200409 submitted by Fareham Borough Council  
PID6 Fareham Borough Council comments on 'Old Street' decision.  
PID7 Appellant's comments on 'Old Street' decision.  
PID8 Natural England's (NE) consultation response on shadow Habitats Regulation Assessment as Statutory nature Conservation Body.  
PID9 Appellant's response to NE's consultation response (PID8) including an updated shadow Habitats Regulation Assessment.  
PID10 Titchfield neighbourhood Forum's response to NE's consultation response (PID8)  
PID11 Titchfield Neighbourhood Forum's comments on the Housing Delivery Test (HDT) results and the changes to the National Planning Policy Framework (the Framework).  
PID12 Fareham Borough Council's comments on the HDT results and the changes to the Framework.  
PID13 Appellant's comments on the HDT results and the changes to the Framework.  
PID14 Titchfield Neighbourhood Forum's final comments on HDT and Framework  
PID15 Appellant's final comments on HDT and Framework.

END



## Appeal Decision

Inquiry Held on 24 to 26 September 2019

Site visits made on 23, 25 and 26 September 2019

**by Grahame Gould BA MPhil MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 5 November 2019**

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**Appeal Ref: APP/A1720/W/19/3230015**

**Land to the east of Downend Road Portchester**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Miller Homes against the decision of Fareham Borough Council.
  - The application Ref P/18/0005/OA, dated 2 January 2018, was refused by notice dated 26 April 2019.
  - The development proposed is described as 'Outline planning application with all matters reserved (except the means of access) for residential development, demolition of existing agricultural buildings and the construction of new buildings providing up to 350 dwellings; the creation of new vehicular access with footways and cycleways; provision of landscaped communal amenity space, including children's play space; creation of public open space; together with associated highways, landscaping, drainage and utilities'.
- 

### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Miller Homes against Fareham Borough Council. That application is the subject of a separate Decision that will follow the appeal decision.

### Preliminary Matters

3. The Inquiry sat for three days between 24 to 26 September 2019. I made what the Planning Inspectorate refers to as an 'access required' visit to the site on 25 September when I was granted access to enter and view the site, rather than being accompanied by representatives for the appellant and the Council. I also made unaccompanied visits to the area within the vicinity of the appeal site on 23 and 26 September.
4. While the Inquiry finished sitting on 26 September, I adjourned it, as opposed to closing it to allow for the submission of: a certified copy of an executed Section 106 agreement (S106); the appellant's and the Council's closing submission in writing; some documents referred to by the parties in evidence (inquiry documents [IDs]); a final version of the inquiry position statement; and the appellant's written application for costs and the Council's response to that application. The Inquiry was closed in writing on 21 October 2019.

5. The S106 was received by the Planning Inspectorate on 3 October 2019 and it contains planning obligations concerning:
- the provision of 40% affordable housing within the development;
  - the implementation of improvements to the Cams bridge;
  - the undertaking of off-site highway works for alterations at the railway bridge in Downend Road and on the A27;
  - the payment of contributions for various off-site highway and transportation improvements and the implementation of an occupiers travel plan;
  - the provision of and the payment of maintenance contributions for public open and play space;
  - the payment of a contribution to mitigate the development's effects on off-site designated habitats; and
  - the payment of a contribution for school facilities in the area.

### **Main Issues**

6. The main issues are:
- whether the development would make adequate provision for pedestrian access via Downend Road and the effects of providing pedestrian access on the operation of Downend Road;
  - whether there would be accessibility to local services and facilities for the occupiers of the development by a range of modes of transport; and
  - the effects of the development on the integrity of the Portsmouth Harbour Special Protection Area and Ramsar Site, the Solent and Southampton Special Protection Area and Ramsar site and the Solent and Dorset Coastal Potential Special Protection Area (the designated habitats).

### **Reasons**

#### *Pedestrian access via Downend Road and effects on the operation of Downend Road*

7. Having regard to the wording of part a) of the reason for refusal, ie pedestrian use of Downend Road and any subsequent implications for the 'safety' of and 'convenience' of users of this road, and the evidence put to me, there are various matters that come within the scope of the consideration of this main issue. Those matters, which I consider below in turn, being: the pedestrian routes that would be available to occupiers of the development; the pedestrian demand (movements) and the distribution of those movements amongst the pedestrian routes; and the options for and effects of altering the railway bridge in Downend Road to accommodate the pedestrian movements arising from the development.
8. Inevitably there is some overlap between the matters of pedestrian movements and their distribution to be consider under this issue and the

wider accessibility to services and facilities that concerns the second main issue that I have identified.

Proposed pedestrian routes

9. The development would involve the construction of 350 dwellings to the north of a railway line, just beyond part of Portchester's established residential area. The development would have three pedestrian routes to and from it and they would be via: Downend Road, the westernmost of the routes (route A); Cams bridge, the central route (route B); and Upper Cornaway Lane, the easternmost route (route C).
10. Cams bridge crosses the railway line and currently provides access between the site and a small vehicle repair garage and The Thicket, the latter being a residential street. Separately planning permission has been granted for upgrading works to the Cams bridge to facilitate its use as a pedestrian route for occupiers of the appeal development. On the southern side of Cams bridge there is a tarmacked track leading off The Thicket. With the upgrading of Cams bridge route B would be a pedestrian route of an essentially urban character.
11. Route C would in part be reliant on the use of an unsurfaced, one metre wide and 200 metre or so length of a public right of way (footpath PF117), and Upper Cornaway Lane, a street providing access to the crematorium and some chalet type homes. Given the rural character of FP117 and its current suitability only for recreational use, some widening and surfacing works would be undertaken to it to enable it to be used more easily by residents of the proposed development.
12. Downend Road can be characterised as being a local distributor road<sup>1</sup>, with a two-way, daily flow of the order of 6,800 vehicles per day<sup>2</sup>. Pedestrians using route A and travelling to and from destinations south of the railway line would have to cross the railway bridge in Downend Road, following some alterations to the bridge being made, which are referred to in more detail below. That railway bridge has variously been described as providing a north/south or east/west crossing of the railway line and I shall hereafter only refer to it as an east/west crossing of the railway line and to drivers making eastbound or westbound crossings of the bridge. On the railway bridge and westbound of it, as far as the junction with the A27, Downend Road is subject to a 30mph speed limit. Immediately eastbound of the railway bridge the speed limit increases to 40mph.
13. In terms of accessing places of work and education, shopping and leisure facilities, public transport (Portchester railway station and bus stops along Portchester Road [A27]) and other services and facilities etc, it is agreed that some occupiers of the development would walk to and from the previously mentioned destinations. However, there is disagreement about the scale of the pedestrian demand and how it would be distributed amongst the three routes.

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<sup>1</sup> Paragraph 6.24 of Mrs Lamont's PoE

<sup>2</sup> Table 2.1 within Mr Wall's proof of evidence and paragraph 41 of Mr Litton's closing submissions for the appellant (ID21)

The pedestrian demand (movements) and the distribution of those movements

14. The appellant's most up to date estimate of the total daily pedestrian demand generated by the development would be nearly 700 movements per day, inclusive of walking trips to access buses and trains, 26.6% or so of all daily trips arising from the development<sup>3</sup>. By contrast the Council estimates that the number of daily single mode walking trips would be of the order of 284 trips, ie origin to destination trips excluding the use of buses or trains (CD10A). The parties agree for the purposes of estimating the development's pedestrian demand that data from the national travel survey 2018 (NTS2018) should be used to establish all trip generation, mode share and journey purpose. It is further agreed that the 2011 Census data should be used to determine the development's population.
15. However, there is disagreement between the appellant's and the Council's transportation witnesses<sup>4</sup> as to what flexibility should be used in applying the acceptable walking distance guidance stated by the Chartered Institution of Highways and Transportation (CIHT) in its guidelines for the 'Provision for journeys on foot' (CIHT2000 [CD25]). There is also a difference of opinion as to whether the mode share for walking to work recorded by the Census, ie 52% of the national level, should be used as a proxy when considering the propensity for all walking trips arising from the development. The consequence of those disagreements being whether local places of work, schools, shopping facilities etc would or would not be within walking range of the development, having regard to the alternatives offered by the three routes.
16. Mr Wall for the appellant is of the view that the suggested acceptable walking distances set out in Table 3.2 of CIHT2000 are dated and are being too rigidly applied by Mrs Lamont for the Council. The guidelines set out Table 3.2 are:

	Town centres (metres)	Commuting/school and sightseeing (metres)	Elsewhere (metres)
Desirable	200	500	400
Acceptable	400	1,000	800
Preferred Maximum	800	2,000	1,200

17. While it has been suggested that the acceptable walking distance guidelines stated in CIHT2000 are dated, given that they are nearly 20 years old, that concern does not seem to be borne out by the information contained within Table NTS0303 contained within NTS2018<sup>5</sup>. That is because between 2002 and 2018 the average walking trip length has remained constant at 0.7 miles (1.12 Km), while walking trips over a mile (1.6 Km) have consistently been of an average length of around 1.4 miles (2.25 km). Those national survey results suggest that individuals' attitudes towards walking trip

<sup>3</sup> Page 2 of CD10A and Paragraph 2.3.9b of Mr Wall's PoE

<sup>4</sup> Mr Wall for the appellant and Mrs Lamont for the Council

<sup>5</sup> Page 4 Appendix 1 of Mrs Lamont's PoE

lengths have not altered appreciably and that there is no particular issue with the currency of the guidance contained in Table 3.2 of CIHT2000.

18. In any event were the guidelines stated in CIHT2000 thought to be out of date, then I would have expected the CIHT to have revised them, either by issuing an amended version of CIHT2000 or publishing an entirely new document. Neither of those courses of action have been initiated by CIHT, with the publication of its 'Planning for Walking' guidance in 2015 (CD27 – CIHT2015) appearing to have provided an obvious opportunity for replacement acceptable walking distance guidelines to have been introduced. Instead CIHT2015 makes cross references to CIHT2000 in sections 4 and 6, which I consider to be a strong indication that CIHT was of the view that irrespective of the age of its acceptable walking guidelines, they continued to have currency. Mr Wall in giving his oral evidence stated that he was unaware of the CIHT undertaking any current review of CIHT2000.
19. Regardless of a walking trip's purpose the appellant contends that an upper ceiling distance of 2.4 Km (1.5miles) should be used. However, setting such a distance is inconsistent with what is stated in CIHT2000 and the average walking trip lengths reported in the NTS2018 and I therefore consider it should be treated with some caution. The wider disagreement about the overall number of pedestrian movements that would be generated is something I shall return to in providing my reasoning for the second main issue. However, in the context of the consideration of the utility of route A, I consider that the walking trips of most significance would be those to and from Cams Hill Secondary School (the school) and the Cams Hall employment site (CHes). That is because the school and the CHes would or would very nearly meet the 2,000 metre preferred maximum distance guideline for walking journeys for schools and commuting stated in CIHT2000.
20. As it is highly unlikely that route C would be used to get to or from either the school or the CHes, there is no need for me to make any further reference to it in considering this main issue.
21. The parties are now agreed that the development would generate 35 or 36 pedestrian crossings of the Downend Road bridge per day, an increase of between 83% and 86% on the present situation<sup>6</sup>. Of the new crossings there is agreement that 24 would be for the purpose of travelling to and from the school. However, unlike the Council, the appellant contends that no use of route A would be made by commuters walking to or from a place of work<sup>7</sup>.
22. There is some disagreement as to whether the CHes would be 2,000 or 2,100 metres from the development. I consider that a 100 metre (5%) difference would not act as a significant deterrent for pedestrians using route A. That is because the time to walk an extra 100 metres would not be great and for a walker using either routes A or B and it would probably be necessary to time the duration of the alternative walking trips to be aware of any meaningful difference between them. Having walked routes A and B, and presuming that a safe pedestrian crossing for the Downend Road railway bridge would be available, I consider that qualitatively there would be very little to differentiate route A from B. I also consider there would be potential

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<sup>6</sup> Page 5 of CD10A

<sup>7</sup> In the zero entry against commuting/business trips in the upper table and supporting text on page 3 of CD10A and in Tables 10 and 11 included in Appendix C to Mr Wall's PoE

for commuters walking between the development and the CHes to vary their routes, to avoid monotony, and to use either route A or B. I am therefore not persuaded that route B would automatically be favoured ahead of route A by those walking to and from the CHes.

23. So, unlike the appellant, I consider it incorrect to discount commuters from walking to or from CHes via route A. I therefore consider that there would be potential for more pedestrian use of Downend Road railway bridge than has been allowed for by the appellant. I also consider that as there is access to the circular countryside public footpath route just beyond the railway bridge that there would be potential for additional recreational walkers, originating from the existing built up area, to be drawn to Downend Road resulting in some additional crossings of the bridge. That is because the provision of enhanced pedestrian facilities would make it safer to cross the bridge and the bridge's existing condition may well be acting as a detractor for recreational walkers.

The five options considered at the application stage for altering the Downend Road railway bridge

24. To accommodate additional pedestrian crossings of the railway bridge in Downend Road there is no dispute that alterations would need to be made to this bridge. That is because the existing bridge only provides a very rudimentary refuge for pedestrians, in the form of a very narrow margin, tantamount to a 'virtual footway', that comprises a strip of tarmac demarcated by a white painted line.
25. To address the additional demand for pedestrian crossings of the bridge the appellant when the appealed application was originally submitted put forward three options for alterations (options 1 to 3). Option 1 would involve the introduction of a formalised virtual footway and has been discounted by Hampshire County Council (HCC). Option 2 would involve the provision of a 1.2 metre wide traditional (raised) footway, with a carriageway width of around 4.8 metres. Option 3 would involve the provision of a 2.0 metre wide footway and a reduction in the width of the carriageway to form a single lane of 3.5 metres and would involve the introduction of a shuttle working arrangement, with the signed priority being in favour of the eastbound stream of traffic. HCC in offering its advice to the Council<sup>8</sup> expressed no preference for either options 2 or 3, with it stating that the final decision on which option should be pursued being deferred until a post planning permission public consultation exercise had been completed.
26. Following the decision of the Council's planning committee to defer the determination of the appealed application in order to enable further consideration to be given to the alteration of the railway bridge, two further options were put forward by the appellant. The first of those, option 4, would be similar to option 3, albeit than in substitution for signed priority vehicles would be controlled by traffic signals. HCC are reported as raising no in principle concern with option 4, albeit it indicated that this option would entail greater driver delay, including unnecessarily during off peak periods, and a maintenance liability, such that options 2 and 3 remained preferable to the highway authority<sup>9</sup>.

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<sup>8</sup> Letter of 29 August 2018 (contained within CD2)

<sup>9</sup> Paragraph 3.2.6 in the i-Transport Technical Note of 28 February 2019 and entitled 'Downend Road Railway Bridge – Review of Pedestrian Options' (CD29)

27. Option 5 would involve no footway provision, with the carriageway available to vehicles crossing the bridge travelling in opposite directions at the same time being 5.0 metres. There would also be 300mm wide margins to protect the parapets on each side of the bridge<sup>10</sup>. Additionally, traffic signals would be installed so that when pedestrians sought to make a bridge crossing they would initiate an all red phase for both eastbound and westbound drivers, making the bridge a pedestrian only area for so long as pedestrians were crossing it. HCC are reported as considering option 5 to be a unique and unsafe means for controlling shuttle working at the bridge and rejected it (CD2<sup>11</sup>). However, HCC's advice to the Council concerning Option 5 appears to have been on the basis that it would involve shuttle working, as opposed to two way working. In this regard HCC is reported as commenting:

*'As such drivers unfamiliar with the site may not expect opposing vehicles to be on the bridge at the same time (both directions on a green signal). This situation is exacerbated by the carriageway width on the bridge which in this controlled situation would encourage drivers to take a more central position in the carriageway. Consequently vehicles may meet each other on the bridge'.* (Appendix 2 of committee report of 24 April 2019 [CD2])

However, HCC's comments regarding option 5 appear to have been made on an erroneous basis, with it having put forward as an alternative to shuttle working. It is therefore unclear what HCC's views on option 5 would have been had it not been treated as being an 'unconventional arrangement'<sup>12</sup>, given its apparent misunderstanding about what this option would entail. It would also appear that the appellant did nothing to bring this misunderstanding to HCC's attention.

28. The Council's determination of the planning application was therefore based on options 2 and 3 being for its consideration and it contends that option 2 would be unsafe for pedestrians, while option 3 scheme would unacceptably affect the safety and convenience of road users. I now turn to the detailed consideration of options 2 and 3.

#### Option 2

29. The railway bridge provides poor facilities for pedestrians crossing it. I recognise that in general terms the provision of a 1.2 metre wide footway on the Downend Road bridge under option 2 would represent an improvement in safety terms compared with the prevailing situation, however, I consider that cannot reasonably be said of the post development situation. That is because the development would be a significant new generator of vehicles crossing the bridge, with the parties agreeing that the development would give rise to a 22% increase in traffic flows on the bridge<sup>13</sup>. Those extra bridge crossings is something that needs to be accounted for when considering whether option 2 would provide a safe environment for the existing and prospective pedestrian users of the bridge.

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<sup>10</sup> As clearly depicted in the cross section contained in Image 3.2 and drawing ITB12212-GA contained in CD29

<sup>11</sup> The summary of HCC's comments to the Council included as Appendix 2 of the Council's committee report of 24 April 2019

<sup>12</sup> Paragraph 3.3.6 in CD29

<sup>13</sup> Page 5 of CD10A

30. I am of the view that a 1.2 metre wide footway under option 2 would not provide a safe bridge crossing facility for pedestrians, having regard to both the increases in vehicular and pedestrian crossings of the bridge, with the development being a new origin/destination for both categories of travellers, particularly during the peak hours for the making of commuting trips and/or school journeys. It is also likely that the pedestrians using the bridge would be likely to be a mixture of adults and school aged children. Given that the demand for additional bridge crossings would largely come from commuters and school children, I consider that activity would be more likely to coincide with AM and PM peaks and would not be evenly spread throughout the day. In saying that I recognise that working hours can be staggered and out of teaching hours' activities occur at schools, but those activities would only give rise to some walking trips for occupiers of the development outside the core peak hours.
31. Having regard to the guidance on footway widths stated in the Department for Transport LTN1/04 'Policy, Planning and Design for Walking and Cycling'<sup>14</sup> and Manual for Streets (MfS - CD23), a footway of 1.2 metres width would be considerably narrower than the generally preferred minimum 2.0 metres referred to in paragraph 6.3.22 of MfS. While the guidance is not expressed in absolute terms the footway to be provided as part of option 2 would potentially be used by a variety of pedestrians, ie adults, children, with or without any impairment. However, a footway of 1.2 metres in width would only just be wide enough for an adult and a child to walk side by side, but would not accommodate two adults with a push chair walking side by side in the same direction or an adult and a wheelchair user side by side, based on the details provided in figure 6.8 of MfS.
32. Regard also needs to be paid to pedestrians travelling in opposite directions wishing to cross the bridge at the same time. In that regard I recognise that as far as pedestrians travelling from or to the development in the peak hours are concerned the bulk of those users would be travelling in the same direction and that this demand for the footway's use would not generate opposing movements. However, there are already users of the bridge and many of them will be making trips across the bridge in the opposite direction to pedestrians leaving or returning to the development. There would therefore be potential for opposing crossings of the bridge to be made at the same time, creating a conflict situation. I consider it cannot be assumed that when directional conflicts arose that one party would give way to the other and with such a narrow footway that would make the use of the carriageway a possibility, bringing pedestrians into conflict with vehicles.
33. Under the prevailing situation, I observed cars frequently encroaching beyond the centre line on the bridge whether there were or were not any pedestrians on the bridge. My seeing cars crossing over the centre line irrespective of whether pedestrians are crossing the bridge is also consistent with the screenshot images included in the appellant's evidence, for example those in appendix A of the appellant's Technical Note of 28 February 2019. All of which is also consistent with the advisory road signs on either side of the bridge warning of oncoming vehicles being in the middle of the road.

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<sup>14</sup> Appendix X to Mr Wall's PoE

34. I therefore find difficult to envisage how that driver behaviour would not continue to be replicated with an increased number of vehicular crossings of the bridge, following a reduction in the carriageway width for vehicles under option 2. That in turn could result in eastbound vehicles needing to mount the footway or their nearside wing mirrors encroaching into the space above the footway. So, under a scenario of vehicles crossing in opposing directions at the same time as pedestrians were also making use of the bridge there would be the potential for the safety of pedestrians to be unacceptably prejudiced.
35. The appellant has sought to justify the provision of a 1.2 metre wide footway, on the basis of having undertaken a 'Fruin' assessment, to judge the level of service this footway would afford its users. However, the extract of the paper written by Mr Fruin submitted at the inquiry (ID5<sup>15</sup>) refers to 'channel's (footways) upwards of 1.8 metres (6 feet) in width having been assessed. I therefore consider that the Fruin methodology has very limited applicability to a footway under option 2 that would be two thirds of the width of the footway referred to in ID5. I therefore find this aspect of the appellant's case does not justify the provision of a 1.2 metre wide footway.
36. While other instances of narrow footways at bridges/archways in Hampshire have been drawn to my attention in evidence<sup>16</sup>. However, those examples do not appear to be directly comparable with the appeal proposals and in any event it is the acceptability of otherwise of the latter that I need to consider.
37. I also find it surprising that HCC considers a 1.2 metre wide footway would be appropriate on a road subject to around 6,750 daily vehicle movements, when the appellant is intending the main and secondary estate roads within the development would have 2.0 metre footways<sup>17</sup>.
38. I therefore consider that option 2 should be discounted as an appropriate alteration to the Downend Road railway bridge for safely accommodating the additional pedestrian use of the bridge that would arise from the development.

### Option 3

39. The appellant's modelling of the effect of option 3's operation traffic flows is heavily reliant on the use of the 'ARCADY' software, that software normally being used to assess the operation of roundabouts. In this instance ARCADY has been set up with a 'dummy arm' as a work around to simulate the operation of eastbound priority shuttle working at the railway bridge. Using ARCADY, the appellant has estimated that in the AM peak hour, the average queue length would be 3.3 vehicles amounting to a delay of 23 seconds<sup>18</sup>.
40. I have never previously come across ARCADY being used for any purpose other than modelling the operation of roundabouts. I therefore find it surprising that HCC, in providing its comments to the Council (included in CD2), did not question ARCADY's use in assessing the operation of shuttle working at a bridge. I consider it unsurprising that the Transport Research Laboratory (TRL), as the developers/product owner of ARCADY, has cast significant doubt on the suitability of its model for assessing a scenario such

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<sup>15</sup> Designing for pedestrians a level of service concept

<sup>16</sup> Appendix X of Mr Wall's PoE and ID11

<sup>17</sup> Paragraph 2.4.2 of the Transport Assessment (CD15)

<sup>18</sup> Page 9 of CD10A

as option 3 because of an issue of dealing with `... the lag times once a vehicle is in the narrowing ...'<sup>19</sup>. So, while HCC appears to have voiced no concerns about ARCADY's suitability, I consider that very little weight should be attached to it for the purposes of assessing the effect of option 3 on the safe and free operation of Downend Road. I also consider it of note that TRL has stated that its PICADY modelling tool, which is designed to model the operation of priority junctions, is also unsuitable for modelling option 3, with TRL referring to its TRANSYT traffic signal software as being more suitable<sup>20</sup>, albeit still something of a work around.

41. In response to the limitations of the appellant's modelling of option 3, the Council has used microsimulation software to assess the operational effects of option 3. That software 'Paramics Discovery Version 22' (PDV22) being a microsimulation model that includes a module, introduced around six months ago<sup>21</sup>, and which has a specific module capable of modelling road narrowings<sup>22</sup>. As a worst case the Council's running of PDV22 predicts that during the AM peak period queues of up to 36 vehicles might extend back from the westbound vehicle give way point and result in westbound traffic being delayed by up to 17 minutes<sup>23</sup>.
42. Given the recent introduction of PDV22 its track record is limited and the appellant has raised concerns about the reliability of PDV22. In that regard it has been argued that the Council's running of PDV22 has not been correctly calibrated for the circumstances of option 3 and that its output results cannot be validated. Mr Wall in cross examination contended that PDV22 appears to have been developed without being informed by driver behaviour. However, producing a model that was incapable of replicating driver behaviour would seem a nonsensical exercise for the product supplier. Given that PDV22 has been developed to assess the operation of a highway under the circumstances of vehicles in one flow giving way to an opposing flow of vehicles at a road narrowing, I consider that very little weight should be attached to the proposition that this software had been developed without regard to driver behaviour.
43. Mr Wall is not a 'modelling expert'<sup>24</sup> and has placed some reliance on the findings of a study undertaken by the TRL for the Department of Transport to support his use of ARCADY and to critique the Council's running of PDV22. The findings of the TRL study were reported in 1982 in a paper entitled 'The control of shuttle working on narrow bridges' (TRL712)<sup>25</sup>. To assist with critiquing the running of PDV22 the appellant has engaged a consultancy specialising in microsimulation modelling, Vectos Microsim Limited (Vectos), and a video file of the model runs Vectos has performed, as well as written advice it has given to the appellant, has been submitted as part of the appellant's evidence<sup>26</sup>. In response to the critique of PDV22 the Council has supplemented its evidence through the submission of a video file for its

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<sup>19</sup> Email from Jim Binning of TRL to Mayer Brown of 23 August 2019, included in Appendix RVL4 appended to Mrs Lamont's rebuttal statement

<sup>20</sup> Email from Jim Binning of TRL to Mayer Brown of 9 August 2019, included in Appendix RVL4 appended to Mrs Lamont's rebuttal statement

<sup>21</sup> Mrs Lamont in during cross examination

<sup>22</sup> Matter of agreement stated on page 8 of CD10A

<sup>23</sup> Mrs Lamont's rebuttal statement

<sup>24</sup> Email of 23 September 2019 to the Planning Inspectorate from Mrs Mulliner on the appellant's behalf

<sup>25</sup> Appendix K to Mr Wall's PoE

<sup>26</sup> Appendix P to Mr Wall's Rebuttal Statement, Note from Vectos of September 2019 entitled 'Paramics modelling - comments on Sysra review and Mayer Brown rebuttal', ID12 and ID15

running of PDV22 and written comments from the software's developer, Systra<sup>27</sup>.

44. For the AM peak period and using PDV22 the appellant estimates that the average westbound queue length would be 6.5 vehicles, with the average delays westbound and eastbound respectively being 43 and 10 seconds<sup>28</sup>.
45. The disagreement about whether the running of PDV22 has reasonably represented the operation of option 3, essentially revolves around the behavioural response of westbound drivers to the signed priority and whether that response would cause significant queuing and driver delays. In that regard the appellant contends that the signed priority has been modelled too rigidly and would not be reflective of actual driver behaviour. It is therefore argued that the Council's prediction of the severity of the westbound queuing and delay times would be unrealistic. That is because TRL712 records that when signed priority shuttle working is in place drivers that do not have the priority only give some measure of preference to drivers in the opposing stream. That resulting in drivers without the priority experiencing around 65% of any delay, while the opposing drivers experience around 35% of any delay.
46. While the appellant has sought to attach significant weight to the findings reported in TRL712, this report of study provides very little information about the computer modelling that was performed and the frequency and duration of the observations of driver behaviour that was undertaken at the two bridge locations that were used.
47. With respect to the computer model referred to in TRL712, were that model to be of wider utility than just perhaps for conducting this study, I would have expected that it would be known to HCC and could have been drawn to Mr Wall's attention during the pre-application and/or application discussions that took place. I say that because within Hampshire road narrowing at bridges/archway is not uncommon, given the examples cited in Mr Wall's evidence and my own observations in determining various unrelated appeals elsewhere in this county. In a similar vein when the previously mentioned email exchange took place between representatives of the TRL and a colleague of Mrs Lamont about software suitability, if the model used in the 1982 study was of utility today then the TRL could have drawn it to the attention of Mrs Lamont's colleague. Instead of that there is reference to the TRL planning to develop new software to model shuttle working. Whatever form the model used in 1982 took, given the advances in computing that have occurred in the last 37 years, it is unlikely it would bare comparison with modern day software.
48. With respect to the bridge locations used in the 1982 study, in the final paragraph in section 3.2 of TRL712 it is stated that traffic flow rates at the bridges and the proportions of traffic crossing the bridges in each direction were different. Those differences could have had implications for the observed driver behaviour that was used to validate the output from the running of the model used in this study.
49. In the time since TRL712's publication there have been significant changes in vehicle technology, most particularly in terms of braking and engine

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<sup>27</sup> Mrs Lamont's Rebuttal Statement, including Appendix 3, ID9, ID10 and ID14

<sup>28</sup> Page 9 of CD10A

technology, which have implications for acceleration and deceleration rates. Vehicle performance is now very different and would not necessarily be reflected in the modelling undertaken as part of the 1982 study. I am therefore doubtful as to whether the acceleration rates used for the purposes of a study undertaken in 1982 can be relied upon today.

50. With respect to the observance of priority signage, much has been made of the Council's PDV22 model runs being too cautious, with it being argued that the modelled driver behaviour would be more akin to that of 'strictly enforced' priority in the language of TRL712. However, option 3 would entail the installation of 'give way' lines and signage clearly indicating that drivers should give way to on-coming traffic. That signing arrangement would in effect be very similar to what is found in the case of a side road forming part of a 'priority junction' where give way signage and road markings are in place, which are routinely observed without strict enforcement. I consider normal driver behaviour is to observe the instructions or warnings appearing on traffic signs, whether they be of a prohibitive or warning type.
51. I therefore consider it reasonable to expect that westbound drivers faced with priority give way signage would take heed of that signage and thus approach the bridge with caution and would avoid commencing a crossing if there was any doubt that it could not be completed safely. So, on approaching the give way point and when there were no eastbound vehicles on the bridge, a driver would need to decide whether there would be enough time to complete a crossing of the bridge before encountering a vehicle travelling in the opposing direction.
52. There is some disagreement as to how much time a driver would deem necessary to make a safe crossing of the bridge, with it also being argued that in working out the time needed westbound drivers would also make a calculation as to whether their crossing of the bridge would unreasonably delay an eastbound vehicle's crossing of the bridge. It being argued, in line with findings reported in TRL712, that if a westbound driver decided its actions would delay an eastbound vehicle then the former would not proceed.
53. In terms of the decision making to be made by westbound drivers, I consider the normal behaviour would be to decide whether a crossing could safely be made, with any decision making about whether their actions would cause delay for a driver travelling in the opposite direction only being a secondary concern. That is because while a westbound driver would be able to judge how long they would need to cross the bridge, they would be unlikely to be able to make the calculation when precisely an eastbound vehicle would arrive at the point where its driver would want to commence its crossing and what any delay caused to the driver of the eastbound vehicle would be.
54. I recognise that some westbound 'platooning' would be likely to arise. That is one vehicle or a group of vehicles following immediately behind another/other westbound vehicle/vehicles already crossing the bridge, irrespective of whether there might be an eastbound vehicle waiting to make a crossing of the bridge. However, I consider the number of vehicles making crossings during an individual platooning event would not necessarily be as great as argued by the appellant. That is because there would come a point at which a westbound driver would decide to observe the priority signage, rather than continue a sequence of not observing it, given that being behind a line of

crossing vehicles it would not necessarily be possible to see whether an eastbound vehicle with priority was waiting to make a crossing. So, while some platooning would arise and would have the potential to reduce westbound queuing and delays, I am not persuaded its occurrence and delay reducing potential would be of the significance claimed by the appellant.

55. As I have indicated above there is very limited information contained within TRL712 about the precise nature of the observation of drivers at narrow bridges, ie how many times driver observations were undertaken and how long they were. I therefore have concerns about driver delay under option 3 being applied on the basis of 35% and 65% respectively for drivers with and without the signed priority, as per the finding reported in TRL712. That being something the appellant has done in critiquing the Council's running of PDV22 to arrive at its finding that if this software is used then in the AM peak period the average westbound queuing length would be 6.5 vehicles and the delay would be of the order of 43 seconds<sup>29</sup>. The Council's review of the appellant's running of PDV22 suggests that the average maximum westbound queue length could be around 20 vehicles at 07:50 AM (ID10).
56. However, it appears that an unintended consequence of the appellant's rebalancing of the priority to replicate a 35%/65% delay split, is the build-up of eastbound queuing in the absence of much westbound traffic, as is apparent from the 07:46:25 screenshot contained in ID9B. Additionally, vehicles travelling in opposing directions crossing the bridge at the same time would appear to have arisen, as shown in some of the screenshots contained in ID9B.
57. For all of the reasons given above I am therefore not persuaded that much weight should be attached to the findings reported in TRL712 for the purposes of calibrating or validating runs for either PDV22 or for that matter ARCADY.
58. It is contended that the PDV22 model runs undertaken by the Council have been incorrectly calibrated. However, the review of those runs undertaken by Systra has not highlighted any fundamental errors in the way its model has been built and run on the Council's behalf. I am therefore inclined to attach greater weight to the commentary on the model's running provided by Systra than Vectos. That is because Systra, as software designer, could be expected to know precisely what its model is intended to do and whether its running by a 'client' has been appropriate, when consideration is given to the parameters needed to run the software.
59. While PDV22 is a new model and may well become subject to some refinement as more use is made of it, on the basis of everything put to me in evidence about it, I consider its use is more appropriate to that of ARCADY. That is because PDV22 has been designed to address narrow road situations, ARCADY is intended to model circulatory road movements and the TRL has advised that ARCADY is not an appropriate tool to model the operation of option 3.
60. While the queuing and delays under option 3 predicted by the Council's running of PDV22 may be somewhat exaggerated, I consider no reliance should be placed on the appellant's ARCADY assessments. In practice the effect on the flow of traffic associated with option 3's introduction would be

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<sup>29</sup> Page 9 of CD10A

likely to somewhere between the range of the results yielded by the appellant's and the Council's running of PDV22. That would be likely to result in queue lengths and driver delay exceeding the AM peak period occurrences that HCC found to be unacceptable when it concluded that the traffic light controlled option 4 would be unacceptable, ie mean maximum queuing of nine vehicles and delays westbound and eastbound respectively of 36.8 and 32.4 seconds<sup>30</sup>.

61. On the basis of the evidence before me I consider that the introduction of option 3 would result in unacceptable levels of queuing and delay for vehicular users of Downend Road.
62. The Council contends that the visibility splay falling within land within the appellant's control would be inadequate for drivers turning right from the development's access onto Downend Road. While a visibility splay that would be fully compliant with the most recent guidance, ie that contained in ID6<sup>31</sup>, would encroach onto third party land, that land comprises undeveloped land, including a ditch. It is therefore unlikely that any development would arise within the third party land, so close to the edge of the highway, as to affect the visibility for drivers emerging from the development's access. I therefore consider that there would be adequate visibility for drivers turning right out of the development's access and that 'edging out' type movements would be unlikely to cause any significant conflicts between drivers emerging from the site access and westbound road users approaching to the give way point proposed under option 3.
63. Concern has also been raised that the introduction of option 3 would adversely affect the vehicular access used by the occupiers of 38 Downend Road (No 38). No 38 lies immediately to the south of the railway line and has a double width dropped kerb providing access to this dwelling's off-street parking. The visibility for drivers emerging from No 38 is already affected by the railway bridge's parapet.
64. The works associated with the implementation of option 3 would have some implications for the manoeuvring for drivers turning right from No 38. However, I consider the new situation would not be greatly different to the existing one and introducing a shuttle working layout would have very little effect on the forward visibility for vehicles emerging from No 38 because there would be no alterations to the railway bridge's parapet. Regard also needs to be paid to the fact that in any given day the number of vehicle movements associated with No 38's occupation would be quite limited, given this access serves a single property. I consider it of note that the safety auditing that has been undertaken to date has not highlighted any particular safety concerns for vehicles emerging from No 38's access associated with the design of option 3.
65. I am therefore not persuaded that the introduction of option 3 would have any adverse effect on the use of No 38's access.

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<sup>30</sup> Table 3.1 in CD29

<sup>31</sup> Junction visibility extract from Design Manual for Road and Bridges CD123 Revision 0 (August 2019)

Conclusions on pedestrian access via Downend Road and effects on the operation of Downend Road

66. For the reasons given above I found that the 1.2 metre wide footway to be provided as part of option 2, would not provide a safe facility for its users.
67. Option 3 through the narrowing of the carriageway to 3.5 metres would provide a safe pedestrian route. However, the narrowing of the carriageway would be likely to result in vehicle queuing and delay during the AM peak period. The precise degree of that queuing and delay is the subject of considerable disagreement, with it having proved quite difficult to model. That is because when Mr Wall prepared the original transport assessment (CD15) there appears to have been no readily available software capable of modelling a road narrowing such as that envisaged under option 3. That led to the use of ARCADY, which as I have explained above, I consider cannot be relied upon, not least because the TRL has stated that it is not suited to modelling shuttle working. In connection with presenting its appeal case the Council has used the comparatively new and not widely tested PDV22, the running of which suggests that considerable vehicle queuing and driver delay could be encountered by westbound vehicular traffic.
68. The appellant has sought to persuade me that the results from the Council's running of PDV22 should not be relied on because it has been set up to run with parameters that are exaggerating vehicle queuing and driver delay because the observation of the signed priority by westbound traffic has been too rigid. The appellant's critique of PDV22 in no small measure relies on computer modelling and behavioural observations at narrow bridges undertaken in connection with the TRL712 study dating back to 1982. However, for the reasons I have given above I have significant reservations about how meaningful the findings reported in TRL712 are today.
69. I recognise that the Council's running of PDV22 may have generated unduly pessimistic queuing lengths and delay times. That said I consider more credence can be attached to the Council's running of PDV22 than either the appellant's running of ARCADY or the appellant's modified running of PDV22, the latter understating the reasonable observance of the signed priority that would underpin the functioning of option 3. The degree of vehicle queuing and driver delay would probably be somewhere between levels estimated through the appellant's and the Council's running of PDV22. Given that the scale of the delay may well exceed that which led HCC to believe that a traffic light variant of option 3, ie option 4, should be discounted. I therefore consider that option 4 may well have been prematurely discounted by HCC. That is because HCC accepted option 3 as being a safe and efficient option, based on modelling reliant on the use of ARCADY.
70. Much has been made of HCC being accepting of both options 2 and 3, but as I have said above, I consider those options have pedestrian safety and capacity shortcomings. I am not persuaded, on the evidence available to me, that I should accept that because HCC has raised no objection to options 2 and 3 then either would be acceptable.
71. A fifth option (option 5) that would retain a two-way traffic flow, without a footway being provided or a narrowing of the carriageway, with an all pedestrian zone activated by traffic lights, on demand by pedestrians wishing to cross the bridge, was put forward prior to the appealed application's

determination. However, option 5 appears to have discounted on safety grounds by HCC on the erroneous premise that it would involve the operation of an unusual form of shuttle working. I therefore consider that option 5 may also have been prematurely discounted by HCC because of a fundamental misunderstanding of the way in which it would function.

72. On this issue I conclude that the development with the implementation of option 2 would make inadequate provision for pedestrian access via Downend Road, while the implementation of option 3, in making adequate provision for pedestrian users of Downend Road, would unacceptably affect the operation of this road because of the vehicle queuing and driver delay that would arise. The development would therefore be contrary to the second criterion of Policy CS5 of the Fareham Core Strategy of 2011 (the Core Strategy) insofar as when the development is taken as a whole it would generate significant demand for travel and were option 2 to be implemented it would not provide a good quality walking facility for its occupiers. The development, were option 3 to be implemented, would also be contrary to Policy CS5 (the second bullet point under the third criterion) because it would adversely affect the operation of Downend Road as a part of the local road network.
73. There would also be conflict with Policy DS40 of the Fareham Local Plan Part 2: Development Sites and Policies of 2015 (the DSP) because the implementation of option 3 would have an unacceptable traffic implication.
74. I also consider that there would be conflict with paragraph 109 of the National Planning Policy Framework (the Framework) because the implementation of option 3 in safeguarding the safety of pedestrians would give rise to a residual cumulative effect, vehicle queuing and driver delay, that would be severe for the road network. The development would also not accord with paragraph 110c) of the Framework because the implementation of option 2 would create a place that would not be safe because of the conflict that there would be between pedestrians and vehicles through the provision of an unduly narrow footway within part of the public highway.

#### *Accessibility to services and facilities*

75. The development would be on the edge of Portchester's already quite intensively built up area and it would adjoin an area that is predominantly residential in character. The existing development in the area lies to the south of the M27 and is on either side of the A27 corridor, which essentially follows an east/west alignment.
76. As I have previously indicated there is considerable disagreement about the site's accessibility to local services and facilities by non-private motorised modes of travel. In that regard the appellant is of the view that the development would generate in the region of 650 pedestrian movements per day, while the Council places that figure at a little short of 300 movements. Central to that disagreement is whether the distance there would be between the new homes and places of work and education, shopping, leisure and public transport facilities (the local facilities and services) would be too far as to be accessible by walking trips.
77. Figure T2 in the originally submitted Transport Assessment (page 66 of CD15) identifies where the local services and facilities are relative to the appeal site. Many of those service and facilities are clustered around Portchester's

shopping/district centre. When regard is paid to the various tables within Appendix C of Mr Wall's proof of evidence it is apparent that many of the local services and facilities shown in Figure T2 would be at distances from the development that would exceed the 'acceptable walking distances' referred to in CIHT2000 (CD25).

78. The three proposed pedestrian routes, A, B and C, would variously provide egress and ingress from the development. However, routes A, B and C would be of varying levels of attractiveness. In that regard I consider route C would not be particularly attractive because the section comprising footpath FP117 would be unlit and that would affect its general utility after darkness, particularly for commuters on their return from Portchester railway station. Generally, the use of all three routes would entail walking trips that would exceed the CIHT2000 guidelines for travelling to and from town centres, while the railway stations in Portchester and Fareham would not be within a comfortable walking distances from the development. The access to bus stops in the area would exceed the 400 metre guideline recently reaffirmed by the CIHT in its 'Buses in urban developments' guidance of January 2018 (CD28).
79. So, I think it reasonable to say that the development would fall short of being particularly accessible by transportation modes other than private motor vehicles. In that regard the appellants' estimates for the number of non-private motor vehicle trips may well be quite optimistic. That said this development would be close to many other dwellings in Portchester and the accessibility to local services and facilities would be similar to that for many of the existing residents of the area. Given the existing pattern of development in the area, I consider there would be few opportunities for new housing to be built in Portchester on sites that would be significantly more accessible than the appeal site, something that the maps in Appendix R to Mr Wall's proof of evidence show. In that regard it is of note that the Council is considering allocating this site for development in connection with the preparation of its new local plan.
80. On this issue I therefore conclude that there would not be an unreasonable level of accessibility to local services and facilities for the occupiers of the development by a range of modes of transport. I therefore consider that the development would accord with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP because it would not be situated in an inaccessible location and it would be well related to the existing urban settlement boundary for Portchester.

#### *Effects on the designated habitats*

81. The appellant, the Council and Natural England (NE) are agreed that the development would be likely to have a significant effect on the designated habitats, namely in-combination effects associated with: increased recreational activity in the Portsmouth Harbour Special Protection Area (SPA) and the Solent and Southampton Water SPA; and the increased risk of flooding in the Portsmouth Harbour SPA and Ramsar site and the Solent and Dorset Coast candidate SPA. Additionally, there would be potential for the development to have a significant effect either alone or in combination with other developments arising from nitrogen in waste water being discharged into the designated habitats.

82. Under the provisions of Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended) (the HRs), there is a requirement to undertake a screening assessment to determine whether a development alone or in combination with others would be likely to have a significant effect on integrity of the internationally important interest features that have caused a habitat to be designated. Having regard to the ecological information that is available to me, including the statement of common ground signed by the appellant, the Council and NE (CD13) I find for the purposes of undertaking a screening assessment that this development in combination with others would be likely to have a significant effect on the interest features of the designated habitats through additional recreational activity and the risk of flooding.
83. With respect to the matter of additional nitrogen in waste water being discharged into the designated habitats, I am content, on the basis of the nitrogen balance calculation included as Appendix 4 in CD13, that the development would not give rise to an increased discharge of nitrogen within the designated habitats.
84. Having undertaken a screening assessment and determined that there would be a significant effect on the designated habitats, I am content that mitigation could be provided so that the integrity of the qualifying features of the designated habitats would be safeguarded. The nature of the necessary mitigation has been identified in CD13 and would take the form of the payment of a contribution to fund management measures identified in the Solent Recreation Mitigation Strategy of 2018 and the imposition of planning conditions to avoid the development causing flooding in the area. The necessary financial contribution forms one of the planning obligations included in the executed S106.
85. In the event of this appeal being allowed I consider the imposition of conditions requiring: the incorporation of a sustainable drainage scheme within the development; the implementation of construction environmental management plan that included measures to preclude the pollution of the waters within the designated habitats during the construction phase; and a limitation on water usage for the occupiers of the development would be necessary and reasonable to safeguard the integrity of the designated habitats.
86. I therefore conclude that the development, with the provision of the mitigation I have referred to above, could be implemented so as to safeguard the integrity of the designated habitats. In that respect the development would accord with Policy CS4 of the Core Strategy and Policies DSP13 and DSP15 of the DSP because important habitats would be protected.

## **Other Matters**

### *Housing Land Supply*

87. The Council cannot currently demonstrate the availability of a five year housing supply (5yrHLS), with it being agreed that the current five year requirement is 2,730 dwellings. However, there is disagreement as to what the quantum of the 5yrHLS shortfall is when regard is paid to the supply of deliverable sites for homes, having regard to the definition for 'deliverable' stated in Annex 2 of the Framework. That definition stating to be considered deliverable:

'... sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular: ...  
b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.'

88. The appellant contends that the current deliverable supply of homes is 1,323 dwellings, equivalent to HLS of 2.4 years, while the Council argues that the deliverable supply of homes is 2,544 homes, equivalent to an HLS of 4.66 years<sup>32</sup>.
89. That difference being attributable to the appellant having deducted 1,221 dwellings from the deliverable supply identified by the Council. That deduction being made up of: 761 dwellings associated with large sites without development plan allocations and not benefiting from a planning permission (inclusive of some with resolutions to approve); 100 dwellings on the brownfield register, but with no submitted application; 70 dwellings concerning allocated sites but only with a resolution for approval; 50 dwellings concerning allocated sites without a planning permission; and 240 dwellings forming part of the Welborne allocation that would not be delivered in the five year period because planning permission for that development has not been issued.
90. The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.
91. The development would therefore be capable of making a meaningful contribution to the reduction of the current housing shortfall, with 215 dwellings anticipated to be delivered in the five year period between January 2022 and the end of March 2024<sup>33</sup>.

#### *Heritage effects*

92. The development would be situated within the extended settings for: Portchester Castle, a Grade I listed building and scheduled monument; Fort Nelson, a Grade II\* listed building and scheduled monument; and the Nelson Monument, a Grade II\* listed building. The Castle is situated to the south of the site towards the northern extremity of Portsmouth Harbour. Fort Nelson and the Nelson Monument lie to the north of the site, off Portsdown Hill Road.
93. The designated heritage assets are of significance because of their importance to the military history of the local area. However, I consider the effect of the development on the significance of the heritage assets would be less than

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<sup>32</sup> Having regard to the figures quoted in paragraphs 1.18 and 1.19 in the Housing Land Supply SoCG (CD14)

<sup>33</sup> Table 1 in Mrs Mulliner's PoE

substantial, having regard to the policies stated in section 16 (Conserving and enhancing the historic environment) of the Framework. That is because the development would be read within the context of Portchester's extensive established built up area. Nevertheless, paragraph 193 of the Framework advises '... great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'. The less than substantial harm I have referred to therefore attracts great weight.

### *Planning Obligations*

94. The S106 would secure the provision of 40% affordable housing within the development to accord with the provisions of Policy CS18 of the Core Strategy. To mitigate the development's off-site effects on the operation of the local highway network and demands on local transport infrastructure the S106 includes various obligations that would require contributions to be paid to fund appropriate works. There are also obligations relating to the, the provision of and the payment of maintenance contributions for public open and play space and the payment of a contribution for school facilities in the area. To minimise dependency on private motor vehicle usage amongst occupiers of the development the S106 includes planning obligations that would require the undertaking of improvements to the Cams bridge and implementation of a travel plan.
95. Those planning obligations would address development plan policy requirements and I consider that they would be: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. While the planning obligations are necessary, of themselves there is nothing particularly exceptional about them.

### **Planning Balance and Conclusion**

96. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
97. For the reasons given above I have found that the development with the implementation of the option 2 alteration to the Downend Road railway bridge would make inadequate provision for pedestrian access via Downend Road. I have also found that while the implementation of the option 3 alteration to the Downend Road railway bridge would make adequate provision for pedestrian users of Downend Road, the development would unacceptably affect the operation of this road because of the vehicle queuing and driver delay that would arise. I consider those unacceptable effects of the development give rise to conflict with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP and paragraphs 109 and 110c). I consider that the elements of Policies CS5 and DSP40 that the development would be in conflict with are consistent with the national policy and are the most important development plan policies for the purposes of the determination of this appeal. I therefore consider that great weight should be attached to the conflict with the development plan that I have identified.

98. I have found that the accessibility to local services and facilities by modes of transportation other than private motor vehicles would not be unreasonable. That is something that weighs for the social benefits of the development. The development would be capable of being implemented in a manner that would safeguard the integrity of the off-site designated habitats and in that regard the development would have a neutral effect on the natural environment. In relation to these main issues there would be compliance with some of the development plan's policies. Nevertheless, the conflicts with the development plan that I have identified are of sufficient importance that the development should be regarded as being in conflict with the development plan as a whole.
99. There would be significant social and economic benefits arising from the construction and occupation of up to 350 dwellings, including the short term boost to the supply of market and affordable homes in the Council's area. There would be some harm to the setting of the nationally designated heritage assets in the area, however, I have found that harm would be less than substantial and I consider that harm would be outweighed by the previously mentioned social and economic benefits arising from the development.
100. I am of the view that the unacceptable harm to pedestrian safety and the operation of the public highway that I have identified could not be addressed through the imposition of reasonable planning conditions. I have assessed all of the other material considerations in this case, including the benefits identified by the Appellant, but in the overall planning balance I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
101. I therefore conclude that the appeal should be dismissed.

*Grahame Gould*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

John Litton	Of Queens Counsel instructed by Terence O'Rourke Limited
Tim Wall BA MSc MCIHT CMILT	Associate Partner of i-Transport LLP
Jacqueline Mulliner BA (Hons) BTP (Dist) MRTPI	Director and Head of national planning with Terence O'Rourke Limited

### FOR FAREHAM BOROUGH COUNCIL:

David Lintott	Of Counsel instructed by the Council's legal officer
Vera Lamont BEng MICE FCIHT MCMi	Director with Mayer Brown
Andrew Burgess BA (Hons) MRTPI FRSA	Senior consultant with Adams and Hendry Consulting Limited
Richard Wright	Principal Planner (Development Management)

### INTERESTED PARTIES:

Councillor Nick Walker	Fareham Borough Council
Councillor Roger Price	Fareham Borough Council
Councillor Shaun Cunningham	Fareham Borough Council
John McClimont	Chairman Fareham Society
Brian Eastop	Local Resident
Anne Brierly	Local Resident

## **INQUIRY DOCUMENTS (IDs) SUBMITTED AT OR AFTER THE INQUIRY**

ID1	Mr Lintott's opening submissions on behalf of Fareham Borough Council
ID2	Mr Litton's opening submissions on behalf of the appellant, with appendices
ID3	Statement of Councillor Walker and Councillor Sue Bell
ID4	Statement of Mr McClimont, Chairman of the Fareham Society

- ID5 Article by John Fruin 'Designing for pedestrians: a level-of-service concept'
- ID6 Junction visibility extract from Design Manual for Road and Bridges CD123 Revision 0 (August 2019)
- ID7 i-Transport drawings ITB12212-TR: 001A; 002A; 003A; 006A; and 007A and ITB12212-GA-104A annotated by Mayer Brown
- ID8 Mayer Brown additional statement of facts
- ID9 Vectos Model re-run by Mayer Brown output data and screen shots
- ID10 Queue Assessment Information (including data sheets) from i-Transport, response to rerun of Vectos Model undertaken by Mayer Brown
- ID11 Annotated services/facilities context maps of the footways at bridges/tunnels examples included in Appendix V of Mr Wall's Proof of Evidence
- ID12 Vectos comments on the Downend Road Railway Bridge Paramics Modelling undertaken by Mayer Brown in September 2019 further to the review comments being made by Systra
- ID13 Councillor's Cunningham's speaking note
- ID14 Mayer Brown Video file for the operation of Downend Road Bridge
- ID15 i-Transport Video file for the operation of Downend Road Bridge
- ID16 Mrs Mulliner's speaking note on housing land supply
- ID17 Copies of development plan policies CS4, DSP13, DSP15
- ID18 Final version of list of suggested planning
- ID19 Certificated copy of the executed Section 106 agreement
- ID20 Final version of the Inquiry Position Statement
- ID21 Mr Lintott's written closing submissions on behalf of Fareham Borough Council
- ID22 Mr Litton's written closing submissions on behalf of the appellant



## Appeal Decisions

Inquiry Held on 9-12, 16-19 and 23-25 February 2021

Accompanied site visit made on 13 April 2021

**by I Jenkins BSc CEng MICE MCIWEM**

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 8<sup>th</sup> June 2021

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### **Appeal A Ref: APP/A1720/W/20/3252180**

#### **Land at Newgate Lane (North), Fareham,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Fareham Land LP against Fareham Borough Council.
  - The application Ref. P/18/118/OA, is dated 19 September 2018.
  - The development proposed is demolition of existing buildings and development of up to 75 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure.
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### **Appeal B Ref: APP/A1720/W/20/3252185**

#### **Land at Newgate Lane (South), Fareham,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Bargate Homes Ltd. against Fareham Borough Council.
  - The application Ref. P/19/0460/OA, is dated 26 April 2019.
  - The development proposed is demolition of existing buildings and development of up to 115 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure.
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## **Decisions**

1. Appeal A is dismissed and the outline planning permission sought is refused.
2. Appeal B is dismissed and the outline planning permission sought is refused.

## **Procedural matters**

3. In each case, the planning application subject of appeal is in outline, with all detailed matters except access reserved for future consideration. While the application subject of appeal B was with the Council for determination, the scheme was revised with the agreement of the Council by limiting the unit numbers to 'up to 115 dwellings', rather than 'up to 125 dwellings' as identified on the planning application form. The change was supported by amended plans. I have considered the appeal on the basis of the revised scheme and reflected the details in the summary information above.
4. Following the submission of the appeals, the Council's Planning Committee determined on the 24 June 2020 that, were it still in a position to do so,

- it would have refused to grant planning permission in both cases. In support of its view, the Council cited 15 reasons for refusal in each case (a)-o)). The reasons for refusal were the same with the exception of: appeal A reason e), which relates to the loss of best and most versatile agricultural land; and, appeal B reason i) related to the protection and enhancement of Chamomile. Prior to the Inquiry, the Council confirmed that, in each case, 3 of the other reasons for refusal had been satisfactorily addressed: appeal A reasons f), g) and i); and, appeal B reasons e), f) and h).
5. Each of the schemes is supported by a formally completed unilateral undertaking (UU): appeal site A-UUA; and, appeal site B-UUB, which seek to secure a number of financial contributions, Affordable Housing and sustainable travel measures. In addition, the appellants have provided a unilateral undertaking related to off-site mitigation for the loss of a low use Solent Wader and Brent Goose site (UUC). I have taken those UUs into account.
  6. Reasons for refusal j) and k) relate to the absence of appropriate measures to mitigate likely adverse effects on the integrity of European Protected Sites. The appellants and the Council are content that those matters have now been satisfactorily addressed by mitigation measures secured by the unilateral undertakings. Nonetheless, there is no dispute that if I were minded to allow the appeals, I would need to re-consult Natural England and undertake an Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017*.
  7. Reasons for refusal k)-o) relate to the absence of legal agreements to secure other necessary mitigation measures. However, the Council now considers that those reasons have been satisfactorily addressed by the submitted UUs or could be addressed through the imposition of suitable conditions.
  8. Insofar as appeal A reason for refusal h) and appeal B reason for refusal g) relate to the capacity of the Newgate Lane East junction with Newgate Lane, the Council withdrew<sup>1</sup> that aspect of its case before the appellants presented their evidence on the matter<sup>2</sup>. Therefore, I have not considered it further.

### **Main Issues**

9. I consider that the main issues in these cases are: the effect of the proposals on the character and appearance of the area; the effect on highway safety; whether, with reference to accessibility, the schemes would be sustainably located; the effect on the spatial development strategy for the area; and, the effect on housing land supply.

### **Reasons**

10. Appeal site A comprises 3.95 hectares of agricultural land, which is bounded by a small area of agricultural land to the north, Newgate Lane to the west and Newgate Lane East to the east. The site shares a small proportion of its southern boundary with Hambrook Lodge and the remainder is shared with appeal site B. The appeal A proposal would involve the development of up to 75 dwellings within the site as well as other associated works. Appeal site B comprises 6.1 hectares of agricultural land, which is bounded by Woodcote Lane to the south, Newgate Lane to the west and Newgate Lane East to the

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<sup>1</sup> Including the evidence given by Mr Whitehead.

<sup>2</sup> Inquiry document no. 23.

east. Part way along its length, the northern boundary of the site wraps around the western, southern, and eastern boundaries of the grounds of Hambrook Lodge. Otherwise appeal site B shares its northern boundary with appeal site A. The appeal B proposal would involve the development of up to 115 dwellings within the site as well as other associated works.

11. Vehicular, cycle and pedestrian access to each site would be provided by an access road leading from Newgate Lane. A pedestrian/cycle route is also proposed from appeal site A through appeal site B to Woodcote Lane, leading to the proposed Toucan crossing of Newgate Lane East and Bridgemary. The proposed Toucan crossing would be funded through the provision of a contribution secured by UUB. The *Statement of Common Ground-Linked Delivery* (SoCGLD) has been agreed between the appellants and the Council. It indicates that it would be possible to ensure that the appeal A scheme cannot come forward independently of the appeal B scheme through the imposition of a Grampian condition, thereby ensuring the provision of those proposed access links.
12. The appeal sites form part of an area of countryside situated between the urban settlement boundary of Stubbington, to the west, Gosport, to the east and Fareham, to the north. The settlement referred to as Peel Common in the evidence of the main parties is limited to the residential and commercial properties located off Newgate Lane, Woodcote Lane and Albert Road, within the administrative area of Fareham Borough Council (the Council). Under the terms of the Development Plan, Peel Common does not have a defined settlement boundary and it is also situated in the area of countryside that includes the appeal sites. Furthermore, it does not include the 'Peel Common' housing estate located further to the east within Gosport Borough Council's administrative area. The closest urban boundary to the appeal sites is to the east and is associated with a number of areas within Gosport, such as Bridgemary, Woodcot and the 'Peel Common' housing estate. For simplicity, those areas have been jointly referred to in the evidence of the main parties as Bridgemary. I have taken the same approach in these decisions.
13. Policy CS14 of the *Fareham Local Development Framework Core Strategy, 2011* (LP1) indicates that built development on land outside the defined settlements will be strictly controlled to protect the countryside from development which would adversely affect its landscape character, appearance and function. Policy DSP6 of *the Local Plan Part 2: Development Sites and Policies, 2015* (LP2) indicates that there will be a presumption against new residential development outside the defined urban settlement boundaries (as identified on the Policies Map) and that proposals should not result in detrimental impact on the character or landscape of the surrounding area.
14. The area of countryside situated between the settlement boundary of Stubbington, to the west, Gosport, to the east and Fareham, to the north also forms part of the Stubbington/Lee-on-the-Solent and Fareham/Gosport Strategic Gap (Fareham-Stubbington Gap), shown on the LP2 Policies Map Booklet. LP1 Policy CS22 indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
15. However, the Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites.

The reasoned justification for LP2 Policy DSP40 indicates that the Council is committed to delivering the housing targets in the Core Strategy, and so it is important to provide a contingency position in the Plan to deal with unforeseen problems with delivery. To that end, Policy DSP40 indicates that where it can be demonstrated that the Council does not have a five-year supply of land for housing, additional sites, outside the urban area boundary, within the countryside and Strategic Gaps, may be permitted where they meet a number of criteria (the DSP40 contingency). Those criteria are not as restrictive as the requirements of LP1 Policies CS14 and CS22 or LP2 Policy DSP6. To my mind, it follows that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies would be reduced and would be outweighed by compliance with LP2 Policy DSP40.

### ***Character and appearance of the area***

16. Criterion (ii) of LP2 Policy DSP40 requires that the proposal is well related to the existing urban settlement boundaries and can be well integrated with the neighbouring settlement. To ensure that this is the case, the reasoned justification for the Policy indicates that sensitive design will be necessary. The Council and the appellants agree that the existing urban settlement boundary of Bridgemary is relevant in this context. Criterion (iii) of Policy DSP40 requires that the proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the countryside and, if relevant, the Strategic Gaps. In this context the main parties agree that both Bridgemary and Peel Common are relevant neighbouring settlements. The reasoned justification for LP1 Policy CS22, which deals with development in Strategic Gaps, indicates that they do not have intrinsic landscape value but are important in maintaining the settlement pattern. I consider therefore, that the Strategic Gap designation is of little relevance to this particular main issue. I deal with the effect on the Fareham-Stubbington Gap later in this decision.
17. Peel Common would be the closest settlement to both appeal sites. The pattern of built development there is characterised, for the most part, by ribbon development that fronts onto the western side of Newgate Lane, with small spurs eastwards along the southern side of Woodcote Lane and westwards along Albert Road. Along Newgate Lane the ribbon of development only extends northwards to a point just beyond the alignment of the southern boundary of appeal site A on the opposite side of the highway. I consider that the only notable development to the west of appeal site A, on the western side of Newgate Lane, comprises: Peel Common Wastewater Treatment Works, which is set well back from the highway and is screened from view by landscaping; and, Newlands' Solar Farm, which is relatively low profile. Peel Common is described by the *Fareham Landscape Assessment, 2017* (FLA) as an isolated small settlement and, in my view, given its scale, pattern of development and location in the countryside, that is a reasonable assessment.
18. Both appeal sites are divided into an eastern and western section by the River Alver, which runs in a north-south direction through the sites. To the east of the river the land within the appeal sites is predominantly arable and to the west grassland. The latest Illustrative Masterplans submitted in support of the schemes indicate that, in both cases, the proposed dwellings would be clustered on the eastern side of the River Alver and the land to the west would comprise public open space. To my mind, the absence of residential

development from the western sections of the sites would be necessary, due to the environmental constraints associated with the land to the west of the river, and it could be secured by condition. The constraints include areas at high risk of surface water flooding and of particular ecological value.

19. As a result, and in stark contrast to the existing settlement pattern of Peel Common, none of the proposed residential properties would front onto Newgate Lane or be directly accessed from either Newgate Lane or Woodcote Lane. Links between appeal site B and Woodcote Lane would be limited to a pedestrian/cycleway connection. In each case, the main access to the proposed residential areas would comprise a single access road between Newgate Lane and the eastern section of each site. The sections of these roads through the proposed public open space, in the western sections of the sites, would be devoid of roadside development for the reasons set out above, which would further weaken the relationship between the proposed residential areas and the existing settlement. I understand that in terms of dwelling numbers, the appeal B scheme would be larger than the size of the existing settlement of Peel Common and the appeal schemes together would be approximately double its size. I consider that, with particular reference to their size and location, the proposals have not been sensitively designed to reflect the character of the neighbouring settlement of Peel Common, contrary to the aims of LP2 policy DSP40(iii). Furthermore, in my judgement, due to the site constraints, these are not matters that could be satisfactorily mitigated through design at the reserved matters stage.
20. The area of Bridgemarky, which is situated to the east of the appeal sites, is primarily residential in character, with a variety of building styles generally of 1 to 2-storeys in height. A network of roads and footways provides for ease of movement within that residential area and closely integrates it with the much larger urban area of Gosport. The appeal proposals would also be residential in character and proposed buildings of a similar scale could be secured by condition. However, the appeal sites would be set well apart from that existing urban area, beyond agricultural fields and a recreation ground. The most direct access route between them would be along Woodcote Lane, across Newgate Lane East and along Brookes Lane; a route unsuitable for cars. In my judgement, the appeal schemes, whether considered on their own or together would comprise and would be perceived as islands of development in the countryside set apart from the existing urban settlements. They would not amount to logical extensions to the existing urban areas. I consider that, with particular reference to their isolated location, the proposals have not been sensitively designed to reflect the character of the neighbouring settlement of Bridgemarky. Furthermore, they would not be well related to the existing urban settlement boundary of Bridgemarky or well-integrated with it. In these respects, the proposals would conflict with LP2 Policy DSP40(ii) and (iii). In my judgement, due to the location of the sites, these are not matters that could be satisfactorily mitigated through design at the reserved matters stage.
21. In relation to the requirement of Policy DSP40(iii) that any adverse impact on the countryside be minimised, the Council argues that 'minimise' should be interpreted as requiring any adverse impact to be small or insignificant. I do not agree. The aim of the Policy is to facilitate development in the countryside relative in scale to the demonstrated five-year housing land supply shortfall. To my mind, any new housing development in the countryside would be likely to register some adverse landscape and visual effect, and

development of a scale to address a substantial shortfall would be unlikely to register a small or insignificant impact. The Council's approach would make the Policy self-defeating. Given the aim of the Policy with respect to housing land supply, I consider that it would be reasonable to take 'minimise' to mean limiting any adverse impact, having regard to factors such as careful location, scale, disposition and landscape treatment.

22. The Framework places particular emphasis on the protection and enhancement of valued landscapes (in a manner commensurate with their statutory status or identified quality in the Development Plan). It seeks to give the greatest level of protection to the landscape and scenic beauty of designated areas, such as National Parks and Areas of Outstanding National Beauty (AONB). The appeal sites are not the subject of any statutory or non-statutory landscape designations. Nonetheless, *Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA)* by the Landscape Institute and Institute of Environmental Management & Assessment indicates that the absence of a designation does not mean that an area of landscape is without any value and points to landscape character assessments as a means of identifying which aspects of a landscape are particularly valued. Furthermore, insofar as it seeks to minimise any adverse impact on the countryside, I consider that LP2 Policy DSP40 is consistent with the Framework, which seeks to ensure that decisions contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
23. As the planning applications the subject of these appeals are in outline, a full assessment of the landscape and visual impacts of the proposed schemes cannot be carried out at this stage. Nonetheless, the illustrative layout plans indicate that, in each case, the proposed dwellings would be set back from the perimeter of the site beyond relatively narrow areas of landscaping. To my mind, the scope for landscaping would be unlikely to be significantly greater, given the number of dwellings proposed and that it would not be reasonable to seek to use a condition to modify the developments to make them substantially smaller in terms of unit numbers than that which was applied for. In my view, that would amount to a change upon which interested parties could reasonably expect to be consulted and would require a new application. Whilst the Design and Access Statements indicate that the proposed buildings may be up to 3-storeys in height, the appellants have indicated that they could be limited to 1-2 storeys, in keeping with the surroundings, through the imposition of conditions and without reducing the numbers of units proposed.

#### *Landscape impact*

24. GLVIA indicates that the assessment of landscape effects involves assessing the effects on the landscape as a resource in its own right. This is not just about physical elements and features that make up the landscape; it also embraces the aesthetic<sup>3</sup>, perceptual and experiential aspects of the landscape that make different places distinctive/valued.
25. Natural England's *National Character Assessment* places the appeal sites within the South Coast Plain National Character Area, the characteristics of which include that the plain slopes gently southwards towards the coast and there are

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<sup>3</sup> CD138 page 84 Box 5.1 'scenic quality...landscapes that appeal primarily to the visual senses', perceptual aspects...perceptual qualities, notably wilderness and/or tranquillity', 'experiential 'evidence that the landscape is valued for recreational activity where experience of the landscape is important'.

stretches of farmland between developed areas. At a county level, the sites form part of the Gosport and Fareham Coastal Plain Landscape Character Area, as identified by the *Hampshire Integrated Character Assessment 2012* (HICA), and within that area part of the Coastal Plain Open Landscape Type.

Its characteristics include, amongst other things, extensive and flat or gently sloping plain, often associated with arable land uses and some of the most densely developed areas in Hampshire have occurred in this landscape.

The HICA informed the *Fareham Landscape Assessment, 2017* (FLA), which was commissioned by the Council to inform emerging Local Plan policy.

26. The FLA identifies the area within which the appeal sites are situated as Landscape Character Area 8 (LCA 8), Woodcot-Alver Valley. LCA 8 forms part of the easternmost extent of the Fareham-Stubbington Gap and is divided into 5 Local Landscape Character Areas (LLCAs). More specifically appeal site A and the majority of appeal site B, with the exception of the strip of land to the west of the River Alver, fall within LLCA 8.1a. This area is generally bounded by Newgate lane to the west, Woodcote Lane to the south, the western edge of Bridgemary to the east and Speedfields Park Playing Fields to the north. Outside of this LLCA, to the west and south are the main residential sections of the Peel Common settlement, which fall within LLCA 8.2: *Peel Common and Alver Valley*, as does the western section of the appeal B site. Newlands' Solar Farm and Peel Common Wastewater Treatment Works, which are sited to the west of the appeal sites, fall within LLCA 7.1: *Fareham-Stubbington Gap*.
27. The FLA comments both on the character of LLCA 8.1a prior to the completion of Newgate Lane East and on the likely implications of that highways scheme.
28. Prior to the completion of Newgate Lane East, the FLA recognises that LLCA 8.1a is not covered by any current national or local landscape designation, its scenic quality is not exceptional and it is affected by some localised intrusion of urban features around its periphery. It indicates that LLCA 8.1a shares the typically flat, low-lying character of the coastal plain landscape and whilst it lacks the very open, expansive character of other parts of the coastal plain (including adjacent land within the Strategic Gap to the west), it nevertheless has a relatively open and large-scale character. More specifically, it is generally devoid of built development (apart from buildings at Peel Farm<sup>4</sup>), retains a predominantly open, rural, agricultural character, and tree belts along its boundaries to the north, east and south give the area a sense of enclosure from surrounding urban areas and contribute to its aesthetic appeal. The FLA indicates that overall, the landscape value of LLCA 8.1a is moderate to high. Furthermore, the FLA identifies that the landscape resource has a high susceptibility to change, as it has very limited capacity to accommodate development without a significant impact on the integrity of the area's rural, agricultural character. Whilst these judgements are not disputed, the Council and appellants disagree over the impact that the construction of Newgate Lane East has had.
29. Regarding Newgate Lane East, the FLA anticipated that as the road corridor would be relatively narrow, unaffected land within the rest of the area should be of sufficient scale to maintain its essentially rural character. In my view, this is the case notwithstanding that the roadside planting, which has the potential to reduce the visibility of the highway and associated fencing, has yet to

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<sup>4</sup> Around Hambrook Lodge.

mature. Furthermore, given the relatively low profile of the road scheme, the openness of the area is largely unaffected. Under these circumstances, I consider that whilst the landscape value of LLCA 8.1a has been reduced by the road scheme to medium, the susceptibility of the landscape to change remains high, rather than low/medium identified by the *Landscape and Visual Impact Assessments* submitted in support of the applications (LVIAs). Support for this judgement is provided by the FLA, which indicates that significant further development in addition to the road scheme would almost certainly have an overwhelming urbanising effect, potentially tipping the balance towards a predominantly urban character. Overall, I regard the sensitivity of the landscape resource within LLCA 8.1a to be medium/high, consistent with the Council's Landscape and Visual Assessment findings, and contrary to the low/medium findings set out in the LVIAs.

30. In both cases, the proposals would replace a significant proportion of the agricultural land within LLCA 8.1a with residential development. Whether single-storey or taller buildings are proposed, the massing of each development would add to the sense of enclosure of this LLCA, greatly diminishing its open character and the duration of the impact would be long term. Considering each scheme on its own, the size and scale of the change, taken together with the existing limited intrusion from surrounding urban influences and the effect of Newgate Lane East, would be sufficient in my judgement to tip the balance towards a predominantly urban character. I acknowledge that the impact would not extend beyond LLCA 8.1 to affect a wider area of landscape. Nonetheless, I judge the magnitude of change as medium and the significance would be moderate to moderate/major adverse, even after mitigation. In my view, the effect would not be as low as the minor/moderate or minor adverse significance of effect identified by the LVIAs, which the appellants suggest would be considered acceptable and would not constitute an overall 'harm' to the landscape.
31. As I have indicated, the only section of the appeal sites that falls within LLCA 8.2 is the western section of appeal site B, the development of which would be constrained by its ecological value. Therefore, I give little weight to the view set out in the FLA regarding LLCA 8.2 that there may be potential for some modest, small scale development associated with the existing built form at Peel Common.
32. I consider overall that the proposals would each cause significant harm to the landscape of the area.

#### *Visual impact*

33. There is no dispute that the area from which the proposed developments would potentially be visible, the visual envelope, would be limited. This is due to a combination of the flat topography of the surroundings and the effects of vertical elements such as neighbouring settlement edges and some tall vegetation. As a result, the visual receptors identified by the Council and the appellants are relatively close to the appeal sites and the associated assessments of visual effects provided by those parties are broadly comparable, finding a number of adverse impacts of moderate or greater significance.
34. As regards the users of Newgate Lane, I consider them to be of medium sensitivity to change, consistent with the position set out in the LVIAs and by

- the Council. However, the proposed development would significantly alter views eastwards. Currently long views can be enjoyed from some vantage points across relatively open countryside, Newgate Lane East being low profile infrastructure, towards the tree lined edge of Bridgemary and the 'big skies' noted by the *Technical Review of Areas of Special Landscape Quality and Strategic Gaps* (2020)(TR). As a result of either appeal scheme on its own, residential development would become a prominent feature in the foreground of such views, notwithstanding the proposed setback beyond an area of open space between the highway and the proposed dwellings. From some vantage points, the long rural view would be interrupted entirely, being replaced by a short suburban view of one of the appeal schemes, which would be likely to break the existing skyline and greatly reduce the sense of space. I regard the magnitude of impact as high and the significance of impact as major/moderate adverse, in common with the Council.
35. The LVIA's did not consider vantage points along Newgate Lane East, which was under construction when the assessments were undertaken. I consider users of Newgate Lane East to be of medium sensitivity to change, in common with users of Newgate Lane. It is anticipated that the proposed buildings would be set back from Newgate Lane East beyond a strip of landscaping, within the sites and along the edge of the highway. Nonetheless, given the likely scale and disposition of the built development, I consider it likely that it would still be visible to some extent from that neighbouring road. In my judgement, when travelling between the built-up areas to the north and south, the respite provided by the surrounding countryside along Newgate Lane East is of notable value. That value would be greatly diminished as a result of either scheme. Both would foreshorten views to the west and tip the balance from a predominantly rural to suburban experience. The magnitude of impact on that receptor would be medium and the significance of impact moderate adverse.
36. Overall, I consider that the significance of the visual impact would be moderate to moderate/major adverse. It would have a significant adverse effect on the appearance of the area.
37. The FLA sets development criteria to be met in order to protect the character and quality of landscape resources, views, visual amenity, urban setting and green infrastructure. Whilst the aim of LP2 Policy DSP40 is to minimise, rather than avoid, any adverse impact, I consider that they are of some assistance when judging the extent to which there would be an impact and whether it can be regarded as being minimised. I acknowledge, that in the context of making some provision for housing land supply in the countryside, it would be unrealistic to expect the open, predominantly agricultural and undeveloped rural character of area LLCA 8.1a to be entirely protected as the FLA suggests. However, the proposals would cause significant harm in that regard. Furthermore, rather than situating the proposed developments to the east of Newgate Lane East, next to existing urban areas, the schemes would amount to the creation of substantial new pockets of urbanising built development within existing open agricultural land.
38. I conclude that, in each case, the proposal would cause significant harm to the character and appearance of the area, having had regard to the location, disposition, likely scale and landscape treatment, each would fail to minimise the adverse impact on the countryside. The proposals would conflict with LP2 Policy DSP40(ii) and (iii).

### **Highway safety**

39. The *Statement of Common Ground on Transport (SoCGT)*, agreed between the Council and the appellants, states it is agreed that the individual and cumulative impacts of the northern and southern sites would have a detrimental impact on the operation of the existing right turn lane priority junction between Newgate Lane and Newgate Lane East. Furthermore, this cannot be mitigated by priority junction improvements and so a signalised junction is proposed.
40. The proposed signalised junction would introduce a flare from 1 to 2-lanes on the northbound Newgate Lane East approach to the junction and a merge back to 1 lane some distance after the junction. Furthermore, the SoCGT indicates, in relation to southbound vehicles seeking to access Newgate Lane from Newgate Lane East across 2 lanes of on-coming traffic, the proposed signal method of control would be the provision of an indicative arrow right turn stage. Under the proposed signalling arrangement, right turn movements from Newgate Lane East into Newgate Lane could occur at three points in the cycle of the signals: firstly, turning in gaps in the free flowing northbound traffic; secondly, during the intergreen period when the northbound flow is stopped and before the Newgate Lane traffic is released; and, then if right turners are still waiting after the cycle, the indicative arrow would be triggered to allow them to turn unopposed. The SoCGT confirms that the appellants are proposing an indicative arrow arrangement rather than the provision of a fully signalised right turn stage, as the latter would operate unacceptably in terms of capacity.
41. The appellants' *Stage 1 Road Safety Audit (RSA)* identifies a potential problem with the proposed right turn lane arrangement, with reference to CD 123 of the *Design Manual for Roads and Bridges (DMRB)*. In the context of right turning traffic movements at signal-controlled junctions, CD 123 indicates that where the 85<sup>th</sup> percentile approach speed is greater than 45 mph, there is an increased risk of accidents between right-turning vehicles seeking gaps and oncoming vehicles travelling at speed. It confirms that where the 85<sup>th</sup> percentile approach speed is greater than 45 mph, right hand turns should be separately signalised. Against that background, the RSA raises the concern that higher northbound vehicle speeds (particularly in off-peak traffic conditions) may mean that gap acceptance by the drivers of right turning vehicles could lead to right-turn collisions or to sudden breaking and shunt type collisions. It recommends that, at detailed design stage, signal staging/phasing should incorporate a separately signalled right-turn into Newgate Lane and that it would be appropriate to measure northbound vehicle speeds to design signal staging and phasing arrangements accordingly.
42. DMRB CA 185 sets out the approach to vehicle speed measurement on trunk roads where existing vehicle speeds are necessary to set the basis for the design of signal-controlled junctions. CA 185 confirms that 85<sup>th</sup> percentile vehicle speeds shall be calculated where designs are to be based on measured vehicle speeds. It is common ground that, whilst this standard is intended for use in relation to trunk roads, in the absence of any other reference, it can be used to guide the measurement of vehicle speeds on other roads, such as Newgate Lane East.
43. The SoCGT identifies 3 speed surveys whose results are relevant to the consideration of northbound speeds on Newgate Lane East. They were

undertaken in: September/October 2018; February/March 2020; and November 2020. All three surveys include measurements undertaken at weekends, contrary to the CA 185 protocol which indicates that speed measurements shall not be undertaken at weekends. Nevertheless, they were not limited to weekend measurements. Each survey included measurements on other days of the week, and I have not been provided with any evidence to show that the 85<sup>th</sup> percentile speeds derived from the surveys are not reasonably representative of the weekdays surveyed. However, the last survey was carried out during a period affected by movement restrictions associated with the coronavirus pandemic and the recorded average flow rates are noticeably lower than those recorded at the same times of day in the other two surveys. I consider that, under these circumstances, greater weight is attributable to the results of the earlier two surveys.

44. CA 185 indicates that a minimum number of 200 vehicles speeds shall be recorded in the individual speed measurement period and speed measurements should be taken outside of peak traffic flow periods. The peak hours identified by the *Transport Assessments* submitted in support of the appeal planning applications are 08:00-09:00 hrs (AM peak) and 17:00-18:00 hrs (PM peak). Whilst CA 185 indicates that non-peak periods are typically between 10:00-12:00 hrs and 14:00-16:00 hrs, I share the view of the Highway Authority (HA) that this does not rule out consideration of other non-peak periods, so long as a minimum number of 200 vehicles speeds are recorded in the individual speed measurement period as required by CA 185. Having regard to the results of the September/October 2018 and February/March 2020 surveys for northbound traffic on Newgate Lane East, in addition to the typical periods identified above, the period from 05:00-06:00 hrs meets these criteria, falling outside of the peak hours and having a recorded average flow greater than 200 vehicles.
45. The September/October 2018 and February/March 2020 survey results record 85<sup>th</sup> percentile speeds in the periods 10:00-12:00 hrs and 14:00-16:00 hrs in the range 41 mph-44.8 mph when a wet weather correction is applied. The upper end of this range being only marginally below 45 mph. In the period 05:00-06:00 hrs the results exceeded 45 mph. CA 185 indicates that where there is a difference in the 85<sup>th</sup> percentile speeds derived from the individual speed measurement periods, the higher value shall be used in the subsequent design.
46. I give little weight to the view of the appellants that the introduction of traffic signals, as proposed, would be likely to result in drivers being more cautious and so reduce their vehicle speeds. Even if that were the case, it is not clear that it would reduce 85<sup>th</sup> percentile speeds in the period 05:00-06:00 hrs to below 45 mph or that this undefined factor should be taken into account in the design. The appellants have suggested that in the absence of any demand over-night, the signals would revert to an all red stage, which would further slow the speeds of vehicles. However, it appears that there would be likely to be demand in the period 05:00-06:00 hrs. Furthermore, the HA has confirmed, for a number of reasons, that is not the way multi-arm junctions are set up on its network. Firstly, for junction efficiency, the signals would be expected to rest on green on Newgate Lane East, allowing traffic to proceed unimpeded on the main arm. Secondly, this approach reduces the likelihood of drivers, who wrongly anticipate that the lights will turn from red to green on their approach,

- proceeding without slowing and colliding with others. In light of the HA's established approach, I give little weight to the appellants' suggestion.
47. I consider that the proposals, which would not include separate signalisation of the right-hand turn, would conflict with CD 123.
48. The operation of the existing priority junction involves some drivers turning right from Newgate Lane East into Newgate Lane across a single northbound lane and there is no dispute that at present the junction operates safely. However, the proposed junction arrangement would give rise to the possibility of right turning vehicles gap-seeking across 2 opposing lanes, a practice which the HA considers would be unsafe. I note that Rule 180 of the *Highway Code* indicates that right turning drivers should wait for a safe gap in oncoming traffic. However, the basis of the HA's concern is that a right turning driver may not be able to see an oncoming nearside northbound vehicle, due to screening by offside northbound vehicles, until it is too late to avoid a conflict. The Rule 180 illustration is of a single opposing lane and it does not grapple with the potential for unsighted vehicles in a two opposing lanes scenario. In support of its concern, the HA has identified other junctions where the frequency of accidents involving right turning vehicles has been reduced by moving from a situation where gap-seeking across 2 lanes is allowed to a fully signalised right turn phase.
49. With respect to the modified junctions drawn to my attention by the HA, I agree with the appellants that, in the absence of data with respect to traffic flows, speeds and percentage of right turners at those other junctions, it cannot be determined that they are directly comparable to the appeal junction in those respects. However, nor can it be determined that they are not. Nonetheless, the improved accident record at those other junctions following the introduction of a fully signalised right turn phase appears to me to support, for the most part, the HA assessment that the practice of gap-seeking across 2 lanes was previously a contributory factor to the incidence of accidents<sup>5</sup>. In relation to this matter, I give greater weight to the assessment of the HA, as it is likely to be more familiar with the historic operation of its network, than that of the appellants' highway witnesses.
50. The appellants consider that an arrangement which allows vehicles turning right across two opposing lanes by gap-seeking is common. In support of that view, they have identified 2 junctions in the area where the HA has not prevented right turning vehicles from crossing 2 lanes without signalling: A27/Ranvilles Lane; and, A27/Sandringham Road. However, the HA has indicated that there is a history of accidents associated with right turn manoeuvres at the A27/Ranvilles Lane junction, the most recent having occurred in 2020, and the junction will be taken forward on the HA's provisional list for safety remedial measures during 2021/2022. The A27/Sandringham Road junction is located close to the point at which the speed limit reduces from 40 mph to 30 mph on the A27. Furthermore, Sandringham Road is a cul-de-sac serving far fewer dwellings than would be the case at Newgate Lane as a result of either of the appeal A or B schemes, and so the number of daily or peak hour right turning movements associated with it would be likely to be much lower than the appeal junction. To my mind, the circumstances associated with these two junctions do not lend support to the appeal schemes.

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<sup>5</sup> Whether a 3-year or 10-year accident record period is considered.

51. The appellants argue that in circumstances where a vehicle is waiting at the proposed junction for an approaching northbound offside vehicle to pass before turning right onto Newgate Lane, it is likely that a nearside vehicle screened from view by that offside vehicle would also have passed when the waiting vehicle starts to cross the lanes. To my mind, that would not necessarily be the case, as it would depend on the degree to which the pair of northbound vehicles are staggered and their relative speeds. Some screened vehicles may be slowing to turn left into Newgate Lane causing a right turning vehicle to pause in the offside lane when that previously screened nearside vehicle comes into view and that would potentially bring it into conflict with other approaching offside vehicles. Furthermore, it is foreseeable that right turning drivers seeking gaps may be faced with a stream of traffic in both opposing lanes and with some variation in approach speeds. A nearside vehicle moving past an offside stream of traffic may be unsighted until a late stage and may be closing the gap faster than the right turning driver had anticipated, leading to conflicting movements.
52. With reference to the appellants' *Transport Assessment Technical Note-Junction Modelling Results (TATN)*, by the 2024 design year, the cumulative impact of each appeal scheme and other developments would be likely to result in a marked increase in the total number of right turning vehicles into Newgate Lane. Furthermore, the appellants' traffic modelling predicts that in the AM peak there would not be any suitable gaps in free-flowing northbound traffic for right turning vehicles to cross. However, the proposed signalling arrangement would not prevent drivers from gap-seeking and they may still attempt to do so, if they thought that they could get across, rather than waiting for the intergreen period or the indicative arrow. The modelling predicts that in the PM peak almost all of the right turning traffic would cross in gaps in free-flowing northbound traffic.
53. Against this background, I share the concern of the HA that right turning vehicles gap-seeking to cross 2 oncoming lanes at the proposed junction poses a far greater risk of collisions than the existing arrangement and a significant risk to highway safety.
54. I conclude that the proposed junction arrangement, whether one or both of the appeal schemes were to proceed, would have an unacceptable impact on highway safety. Furthermore, in my view, this harm could not be reduced to an acceptable level through the imposition of a condition(s). As I have indicated, the Council and appellants agree that a fully signalised right turn stage would operate unacceptably in terms of capacity. The proposals would conflict with LP2 Policy DSP40(v), which seeks to ensure that development would not have any unacceptable traffic implications, and it would not fit well with the aims of LP1 Policy CS5(3) insofar as it supports development which does not adversely affect the safety of the local road network. These Policies are consistent with the Framework, which indicates that development should only be prevented or refused on highway grounds in limited circumstances, including if there would be an unacceptable impact on highway safety. This weighs very heavily against the schemes.

***Sustainably located, with reference to accessibility***

55. LP1 Policy CS15 indicates that the Council will promote and secure sustainable development by directing development to locations with sustainable transport

- options. LP1 Policy CS5 indicates that development proposals which generate significant demand for travel and/or are of high density, will be located in accessible (includes access to shops, jobs, services and community facilities as well as public transport) areas that are or will be served by good quality public transport, walking and cycling facilities. LP2 Policy DSP40(ii) seeks to ensure that proposals are sustainably located adjacent to the existing urban settlement boundaries.
56. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and identifies that this should be taken into account in decision-making. I acknowledge that the appeal sites are in the countryside. However, they are situated in a relatively narrow countryside gap between urban areas, rather than a larger rural area where opportunities for sustainable transport could reasonably be expected to be limited. In any event, consistent with Development Plan Policies CS15, CS5 and DSP40, the Framework also indicates that significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
57. The appeal sites are not near to, but are set well apart from: the western, urban area boundary of Bridgemary, as defined by the *Gosport Borough Local Plan 2011-2029 Policies Map*, which is to the east of the appeal sites on the far side of an area of agricultural land that adjoins the eastern side of Newgate Lane East; and, further from the southern settlement boundary of Fareham, which is defined by the LP2 Policies Map Booklet and is located some distance further north at the edge of HMS Collingwood and Speedfields Park. Peel Common does not have a defined urban settlement boundary. As such, I consider that the sites are not adjacent to any existing urban settlement boundary, contrary to the requirement of LP2 Policy DSP40(ii).
58. I acknowledge that the Council appears to have taken a flexible approach to the 'adjacency' requirement in a number of other cases. However, in the cases drawn to my attention, with the exception of the site to the south of Funtley Road, development has taken place or been approved between the application site and the nearest existing urban settlement boundary. In the case of the site to the south of Funtley Road, it abuts a highway on the opposite side of which is some of that other development and the site boundary is a relatively short distance across undeveloped land from an existing urban settlement boundary. The circumstances are not directly comparable to those in the cases before me, in relation to which the sites would be set further apart across undeveloped land from the nearest existing urban settlement boundary. In any event, each case must be considered primarily on its own merits and in my view, the Council's approach elsewhere would not justify harmful development of the appeal sites. I give little weight to those decisions of the Council. Furthermore, appeal decision Ref. APP/L3625/X/16/3165616 considered adjacency in the context of the relationship between a highway and gates set back from it by around 1 metre. The circumstances are not comparable to those in the cases before me and are of little assistance.
59. I turn then to consider the accessibility of the sites with reference to modes of transport. The *National Travel Survey, 2019* (NTS), identifies, amongst other things, the average trip length and duration in England by all modes of travel for the trip purposes of: commuting; education; personal business; shopping; sport (participate); and, entertainment/public activity. There are a range of

- employment, education, retail, health, sport, and leisure uses well within those average distances and durations of the appeal sites. This indicates that there are likely to be some opportunities for residents of the proposed developments to travel less when compared to the national average journey distances and durations, and in this context, the locations of the appeal sites limit the need to travel. However, the NTS 'all modes of travel' includes, amongst other modes, car travel and so it does not automatically follow that the proposed developments would be served by good quality public transport, walking or cycling facilities.
60. The *Manual for Streets* indicates that walkable neighbourhoods are typically characterised by having a range of facilities within around 800 metres walking distances of residential areas which residents may access comfortably on foot. However, it indicates that this is not an upper limit and walking offers the greatest potential to replace short car trips, particularly those under 2 kilometres. This is echoed by the Department for Transport *Local Cycling and Walking Infrastructure Plans (2017)*, which indicates that for walking, 'the distances travelled are generally...up to 2 kilometres'.
61. The Institute of Highways and Transportation's (now CIHT) *Guidelines for Providing for Journeys on Foot, (2000)* (PfJoF) gives more detailed guidance, setting out, with reference to some common facilities, suggested desirable, acceptable and preferred maximum walking distances which range up to a preferred maximum of 2 kilometres for some facilities. The approach is consistent with CIHT's more recent *Planning for Walking, April 2015* (PFW), which indicates that most people will only walk if their destination is less than a mile away (equivalent to around 1.6 kilometres) and about 80% of journeys shorter than 1 mile are made wholly on foot, the power of a destination determining how far people will walk to get to it. To illustrate the point it indicates that while for bus stops in residential areas, 400 metres has traditionally been regarded as a cut-off point, people will walk up to 800 metres to get to a railway station, which reflects the greater perceived quality or importance of rail services.
62. Having regard to the Department for Transport's NTS (Table NTS0303-2020 update), there have been no significant changes in the average walking trip length in the period 2002-2019. To my mind, this indicates it is unlikely that attitudes towards walking trip length have altered to any great extent since the publication of PfJoF. This is consistent with the position taken by my colleague who dealt with appeal Ref. APP/A1720/W/19/3230015, which related to a site elsewhere, in Portchester. I am content therefore, that the PfJoF guidance on acceptable walking distances is not out of date and it provides a reasonable basis for the assessment of whether, having regard to the locations of the appeal sites, walking can be regarded as a genuine choice of transport modes. In addition, PFW indicates that propensity to walk is not only influenced by distance, but also by the quality of the experience, having regard to factors such as the attractiveness and safety of the route.
63. I note that the Council's position regarding the accessibility of the sites is not based on an objection in relation to that matter raised by the Highway Authority, but rather an assessment undertaken by a planning professional with reference to PfJoF, amongst other things. In my view, it does not follow that the weight attributable to the Council's assessment should be reduced. As reported by the appellants, the PfJoF states it is the task of the professional

- planner or engineer to decide if a lower standard is acceptable in given circumstances.
64. There is no dispute that there are a range of services and facilities within 2 kilometres of the appeal sites. However, to my mind, in the absence of any consideration of the 'power of the destinations' and the quality of the experience that is of little assistance. Applying the PfJoF approach, which reflects the 'power of destination', facilities and amenities within its 'acceptable' walking distances of the southern and linked appeal sites are limited to a primary school, a church, and a recreation ground. Within its 'preferred maximum' walking distances there are additionally a college campus (CEMAST), a limited number of small shops and a pub in Bridgemary, an employment area (HMS Collingwood) and four other schools.
  65. However, the appeal sites only fall within the catchment area of one of the five schools, Crofton Secondary School, which is barely within the preferred maximum walking distance. Whilst I understand that Crofton Anne Dale Infant and Junior School, which would serve the appeal sites, is within the maximum walking distances for schools identified by the Department for Education, it falls outside the PfJoF preferred maximum walking distances.
  66. Although PFW indicates that in residential areas, 400 metres has traditionally been regarded as a cut-off point, the CIHT's more recent *Buses in Urban Developments, January 2018* (BUD) provides more detailed guidance. It identifies maximum walking distances between developments and bus stops with the intention of enabling the bus to compete effectively with the car and to benefit a wide range of people with differing levels of motivation and walking ability. It recommends a maximum walking distance of 300 metres to a bus stop served by a service which is less frequent than every 12 minutes.
  67. The SoCGT indicates that the closest bus stop to the appeal sites is on Newgate Lane East and only the southern site would meet that BUD recommendation. Furthermore, the buses return approximately with a frequency of every 75 minutes in each direction and the first northbound bus in the morning, towards Fareham, departs from the bus stop at 09:12 hrs. Notwithstanding that the bus trip duration to the train station may be shorter than the national average trip time by local bus of 36 minutes, to my mind, the start time and frequency of the service would limit the attractiveness of the service as far as northbound commuters are concerned. Whilst there is a bus stop on Tukes Avenue served by a more frequent service, it is significantly further away from the sites than the maximum walking distance for high frequency services recommended by BUD.
  68. The SoCGT indicates that the closer of the 2 appeal sites is some 3.7 kilometres from Fareham Railway Station, a distance well beyond the 800 metres identified by PFW.
  69. I note that the PfJoF was one of the documents that informed the accessibility standards set out in the Council's *Fareham Local Plan 2037 Background Paper: Accessibility Study 2018*, the application of which in the cases before me appears not to result in a significant difference in outcome compared with the application of the PfJoF guidance.
  70. The appellants have applied a Walking Route Audit Tool to the local walking routes, which assesses the attractiveness, comfort, directness, safety, and

coherence of the routes. Whilst a number of the findings are disputed by the Council, I consider that the current condition of the likely route east of the sites to the limited number of shops and the pub referred to in Bridgemaury is of greatest concern. That walking route would involve crossing Newgate Lane East and walking along Brookers Lane. However, difficulties crossing Newgate Lane East, due to the speed and volume of traffic, would be satisfactorily addressed by the proposed provision of a Toucan crossing, funded by a contribution secured by the UUB. Currently, the character of the initial section of Brookers Lane would be likely to dissuade users, due to a lack of street lighting and the potential for people to conceal themselves from view from approaching walkers in trees along the southern side of the route, giving rise to potential safety concerns. However, I consider that these matters could be satisfactorily addressed through the provision of unobtrusive lighting and fencing along the southern side of the route, which would be unlikely to have a material adverse impact on the character or appearance of the locality and could be secured by condition. I acknowledge that these improvements may be of some benefit to the wider community, not just residents of the appeal sites, to which I attribute limited weight.

71. In my judgement, the quality of local walking routes could be made acceptable. However, applying the PfJoF and more recent BUD guidance on walking distances to destinations, the number and range of facilities and amenities within the ranges identified would be limited. I consider overall that the accessibility of the area by walking would be poor and, for the most part, walking cannot be regarded as a genuine choice of transport mode.
72. The site subject of previous appeal decision Ref. APP/A1720/W/19/3230015, was found to satisfy LP2 Policy DSP40(ii). However, the factors taken into consideration in relation to that matter included, amongst other things, that the site was well related to the existing urban settlement boundary for Portchester and close to many other dwellings in Portchester, and accessibility to local services and facilities would be similar to that for many of the existing residents of the area. Those circumstances are not directly comparable to those in the cases before me. The appeal sites are not well related to an existing urban settlement boundary or close to dwellings within one. Whilst accessibility to local services and facilities would be similar for existing residents of Peel Common, it is a small settlement relative to which each of the appeal schemes would be larger in terms of households. Under the circumstances, I consider that the policy finding of the previous appeal decision is of little assistance in these cases.
73. Within 5 kilometres of the appeal sites, which is a distance commonly regraded as reasonable cycling distance, there is a much greater range and number of services, facilities, amenities, and employment sites. Furthermore, there are shared cycle pedestrian/cycle routes in the vicinity of the appeal sites which would facilitate access by bicycle to the areas to the north, south, east, and west of the sites. I consider therefore that the sites would be served by good quality cycling facilities and cycling could be regarded as a genuine choice of transport modes. However, having regard to the NTS for 2019, in comparison with 250 trips per person per year associated with walking, only 16 trips per person per year were associated with cycling. To my mind, it is likely therefore, that relatively few future residents of the appeal sites would cycle, reducing the weight attributable to this factor.

74. As I have indicated, the bus services available within the maximum walking distances recommended by BUD are very limited and the nearest train station is located well outside the PfJoF preferred maximum walking distance. I acknowledge that the sites would be within reasonable cycling distances of Fareham Train Station and residents could drive there by car. Nonetheless, I consider overall that the sites would not be well served by good quality public transport, the accessibility of the area by public transport would be poor and, for the most part, it cannot be regarded as a genuine choice of transport modes.
75. The Framework indicates that in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be-or have been-taken up, given the type of development and its location. A Travel Plan for each site has been agreed by the HA. However, in my view, it does not automatically follow that the appeal sites would be sustainably located with reference to accessibility. The *Planning Practice Guidance* (PPG) indicates that the primary purpose of a Travel Plan is to identify opportunities for effective promotion and delivery of sustainable transport initiatives, for example walking, cycling, public transport and tele-commuting, in connection with both proposed and existing developments and through this to thereby reduce the demand for travel by less sustainable modes.
76. The proposed Travel Plan measures include, amongst other things, the provision of: information to promote sustainable modes of travel; electric vehicle charging/parking facilities on the sites; a Travel Plan Coordinator as well as contributions towards: the improvement of the Newgate Lane East crossing at Woodcote Lane/Brookers Lane; the provision of shared pedestrian/cyclist infrastructure along parts of the routes between the appeal sites and local schools; and, supporting the use (travel vouchers for residents) and operation of the existing limited bus service in the vicinity of the sites for a number of years. Having regard to these matters, I am satisfied that a number of appropriate opportunities to promote sustainable transport modes have been provided for, in accordance with the aims of LP1 Policy CS15 and the Framework. However, as identified above, I consider that the attractiveness of the existing bus service to commuters would be limited and, in my view, this casts significant doubt over the indicative Travel Plan target which anticipates an increase in bus service use, notwithstanding some provision for travel vouchers.
77. I conclude that the appeal sites would be in a location with some, albeit limited, sustainable transport options and in this respect would accord with LP1 Policy CS15. However, the limitations are such that they would not be in an accessible area, with particular reference to public transport and walking facilities, and I do not regard the sites as being sustainably located adjacent to an existing urban settlement boundary. Insofar as they seek to ensure that development is sustainably located with reference to accessibility, I consider overall that the proposals would conflict with LP1 Policy CS5, LP2 Policy DSP40 and the Framework.

### ***Spatial development strategy***

78. The reasoned justification for LP1 Policy CS22 indicates that gaps between settlements help define and maintain the separate identity of individual

- settlements. It states that Strategic Gaps do not have intrinsic landscape value but are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green infrastructure/green corridors. The Policy indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
79. The appellants place some reliance on the proposed allocation of land for development in the Fareham-Stubbington Gap in the Regulation 18 consultation draft of the emerging *Fareham Local Plan 2036* (LPe). This included allocation HA2 for residential development on land between Newgate Lane East and Bridgemary, within the Fareham-Stubbington Gap. Whilst the Regulation 19 draft of the LPe did not include that allocation, it was based on the assumed imposition of Government's proposals to introduce a new Standard Method, which was not subsequently supported. However, going forward, there is no certainty that the proposed allocation of HA2 will be reinstated by the Council. Furthermore, even if it were, that proposed allocation was the subject of objections at the earlier stage and there is no dispute that the emerging plan is at a relatively early stage towards adoption. Under the circumstances, I give little weight to the possibility that proposed allocation HA2 would form part of the LPe when adopted.
80. The appeal sites fall within the Fareham-Stubbington Gap. The TR indicates that the purpose of this gap is to avoid coalescence between the settlements of Fareham and Bridgemary with Stubbington and Lee-on-the-Solent. Drawing a straight line east-west across the gap between Stubbington and Bridgemary, the appellants have estimated that the appeal schemes would reduce the gap from some 1.6 km to around 1.1 km. However, to my mind, that cross-country approach does not represent the manner in which the gap is likely to be experienced and, as a result, generally understood.
81. Consistent with the TR, I consider that a key vehicle route between the settlements of Fareham and Stubbington from which the Strategic Gap is experienced is along Newgate Lane East (between Fareham and Peel Common Roundabout)/B3334 Gosport Road (between Peel Common Roundabout and Marks Road, Stubbington). Along that route travellers leave behind the urban landscape of Fareham at HMS Collingwood and Speedfields Park and travel to the edge of Stubbington, via Peel Common Roundabout, through an area which includes the appeal sites and is predominantly characterised by undeveloped countryside. The Strategic Gap designation washes over some development, which includes Newlands' Solar Farm, Peel Common Wastewater Treatment Works (WWTW) and the settlement of Peel Common. However, along the route identified, intervening planting prevents the WWTW from being seen and limits views of the low-profile solar farm to glimpses. Furthermore, I consider that, when seen from those highways to the east and south, 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.
82. In each case, the proposals would involve substantial development to the east of Peel Common and, as identified above, it would be sufficient to tip the balance of the character of the area between Peel Common, Bridgemary and Fareham from predominantly rural to suburban. Whilst Fareham, Peel Common and Bridgemary would remain physically separate, the contribution of this area

to the sense of separation provided by the Strategic Gap would be greatly diminished. I acknowledge that the proposals would not materially alter the experience of the Strategic Gap along the B3334 Gosport Road, between Peel Common and development at Marks Road, as they would not be visible from there. However, the appellants have estimated that 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 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.

83. I consider overall that the proposals would cause significant harm to the integrity of the Fareham-Stubbington Gap and the physical and visual separation of settlements, with particular reference to the experience of travellers along the Newgate Lane East section of the Newgate Lane East/B3334 Gosport Road key route, contrary to the aims of LP1 Policy CS22.
84. Furthermore, in my judgement, the impact on the integrity of the Strategic 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 an existing urban settlement boundary and Peel Common were to remain a small, isolated ribbon of development within the gap. The proposals would fail to minimise any adverse impact on the Strategic Gap, contrary to the aim of LP2 Policy DSP40(iii).
85. There is no dispute that the proposals would accord with criterion (i) of LP2 Policy DSP40, being relative in scale to the demonstrated five-year housing land supply shortfall. Turning then to criterion iv), which requires a demonstration that the proposals would be deliverable in the short term. The current tenant of appeal site A has suggested that the formal procedures associated with the surrender of the agricultural tenancy may delay implementation of that scheme. However, based on the timeline and formal procedures for obtaining possession outlined by the appellants, it appears to me that delivery in the short term would be possible<sup>6</sup>. In any event, this matter could be satisfactorily addressed, in relation to both sites, through imposition of conditions that required reserved matters applications to be made within 12 months of the grant of planning permission and the commencement of development within 12 months of the approval of reserved matters, as suggested by the appellants. Under the circumstances, I am satisfied that the proposals would not conflict with criterion iv) of LP2 Policy DSP40. Nonetheless, they would conflict with criteria ii), iii) and v) and I consider overall that each proposal would conflict with LP2 Policy DSP40 taken as a whole.
86. I conclude that each of the schemes, which would conflict LP1 Policy CS22 and LP2 Policy DSP40, would not accord with and would undermine the Council's Spatial Development Strategy.

### ***Housing land supply***

87. The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated

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<sup>6</sup> Michelmores LLP letter dated 20 January 2021 and Lester Aldridge LLP letter dated 3 February 2021.

against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum. Furthermore, having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period. As I have indicated, the Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply. However, they agree on either basis that the shortfall is material and it is not necessary to conclude on the precise extent.

88. A significant proportion of the difference between the supply figures of the Council and the appellants is associated with applications with a resolution to grant planning permission (709 units) and allocations (556 units).
89. In respect of the majority of the sites with resolutions to grant planning permission, which date from 2018, it remains necessary, before planning permission could be granted in each case, for the Council to complete Appropriate Assessment (AA) to establish whether the scheme would have a significant effect upon European Protected Sites. To inform the AA, it is necessary for the developers to demonstrate that their schemes would not increase the levels of nitrates entering the Solent. In order to facilitate that process, in September 2020, the Council established a legal framework through which developers/applicants can purchase nitrate credits associated with land use at Little Duxmore Farm (LDF). However, at the Inquiry, the Council was unsure whether there would be sufficient capacity at LDF to provide mitigation in relation to all the identified sites and whilst it is seeking to secure additional capacity elsewhere, the associated negotiations are not yet complete. Furthermore, since September 2020, only a relatively small number of dwellings have been taken through this process culminating in the grant of planning permission. With respect to the other sites, which together account for over 500 units, I consider that in the absence of favourably completed AAs there is significant doubt about the deliverability of housing within the five-year period on those sites. Furthermore, AA is not the only issue. In a number of the cases, while some progress has been made, necessary planning obligations have yet to be formally secured. This adds to the uncertainty.
90. The Welborne allocation accounts for 450 units included in the Council's assumed supply figure. The site was subject to a resolution to grant outline planning permission for up to 600 dwellings in October 2019, subject to planning obligations being secured. Although the Council expected the planning obligations to be secured pursuant to section 106 of the *Town and Country Planning Act 1990* by the end of the summer 2020, this was not achieved. In December 2020, the developer submitted amended plans for the site. Whilst in January 2021, the Council resolved to grant planning permission for the revised scheme, it would also be subject to planning obligations and a pre-commencement condition would be imposed to ensure that funding had been secured for the improvement of junction 10 of the M27. At the Inquiry, the Council confirmed that whilst funding sources have been identified, not all the necessary agreements are in place to secure the funds. In light of the limited progress made since October 2019 and the outstanding areas of

uncertainty, I consider it likely that housing delivery on that site within the five-year period will fall well short of that assumed by the Council.

91. Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic<sup>7</sup>.
92. The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come.
93. The appellants anticipate that around 123 of the 190 proposed appeal dwellings could be completed within the current five-year period. Against this background, I consider it likely that each of the appeal schemes would make a modest contribution towards reducing the significant shortfall in housing land supply. Having had regard to other appeal decisions drawn to my attention<sup>8</sup>, I give those contributions substantial weight.

### **Other matters**

#### *Planning obligations*

94. Each of the schemes is supported by a formally completed unilateral undertaking: appeal site A-UUA; and appeal site B-UUB. Amongst other things, they include provisions for: a Solent Recreation Mitigation Strategy contribution; on-site open space and play area provision and maintenance contributions; an education contribution; provisions to secure on-site Affordable Housing delivery, sustainable travel measures as well as the implementation of a Travel Plan. UUB also makes provision for: the implementation of a Chamomile Management Plan, for the purpose of conserving the ecological features in the Chamomile and Meadow areas of the site, consistent with the aims of LP2 Policy DSP13; and, a Toucan crossing contribution. Having had regard to the Council's *Community Infrastructure Levy Regulations Compliance Statement, February 2021*, I consider that the UUs would accord with the provisions of Regulation 122 of the *Community Infrastructure Regulations 2010* and the tests of obligations set out in the Framework. Furthermore, I conclude that the infrastructure provisions referred to above would accord with the aims of LP1 Policy CS20.
95. With reference to the ecological assessments submitted in support of the applications, the appellants have indicated that, subject to mitigation measures which would be secured either by the submitted UU's or by condition, the schemes would each provide moderate ecological benefits for the sites, consistent with LP1 Policy CS4 and LP2 Policy DSP13. Furthermore, measures would be incorporated in the design of the schemes to limit energy and water consumption as well as carbon dioxide emissions, which could be secured by condition and would amount to minor environmental benefits, consistent with

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<sup>7</sup> Statements of Common Ground, January 2021 (paragraphs 7.14).

<sup>8</sup> Such as APP/A1530/W/19/3223010, APP/G1630/W/18/3210903, APP/E5900/W/19/3225474, APP/N1730/W/18/3204011 and APP/G1630/17/3184272.

LP1 Policy CS16. I have no compelling reason to take a different view. However, in my judgement, they do not weigh significantly in favour of the schemes, as the benefits would be only moderate/minor and the Framework commonly requires the provision of net gains for biodiversity, minimisation of energy consumption and the prudent use of natural resources.

96. UUC would secure off-site mitigation for the loss of a low use Solent Wader and Brent Goose site. Having regard to the measures secured by UUA, UUB and UUC and with reference to the 'Shadow Habitat Regulations Assessments' submitted in support of the applications, the appellants have indicated that the proposals would not have an adverse effect on the integrity of any European Protected Sites, consistent with the aims of LP2 Policies DSP14 and DSP15, and this would weigh as neutral in the planning balance. These matters are not disputed by the Council.
97. It is common ground that there is an unmet Affordable Housing need in Fareham Borough. The shortfall appears to be sizeable. Looking forward, the Council's adopted *Affordable Housing Strategy (2019)* identifies a need for broadly 220 Affordable Homes per annum over the period to 2036. This can be compared to the delivery of an average of 76 Affordable Homes per annum in the period 2011-2019, well below the need identified for that period by the Council's *Housing Evidence: Overview Report (2017)*. 40% of the proposed dwellings in each case would comprise Affordable Housing, consistent with the requirements of LP1 Policy CS18. Furthermore, I understand that the commercial profits of Bargate Homes Ltd, which is owned by Vivid and has contractual control of both sites, are reinvested in Vivid's wider Affordable Housing Programme. I consider that the proposals would amount to meaningful contributions towards addressing the identified need and the Affordable Housing benefits attract substantial weight in each case.
98. The Council considers that the public open space provision shown on the illustrative masterplans submitted in support of the applications would be sufficient to meet the requirements of LP1 Policy CS21 and I have no reason to disagree. Whilst I acknowledge that the proposed public open space may be of some value to existing local residents, given the accessibility of the countryside thereabouts, I consider that any benefit in that regard would be small and I give it little weight.

*Economic benefits*

99. The Framework gives encouragement to development that would support economic growth. The proposals would be likely to give rise to a range of economic benefits. For example, the appellants have estimated that the proposed households would be likely to generate expenditure in the region of £6.4 million per annum, some of which would be spent locally. Furthermore, the proposals could support an estimated 191 jobs during the three-year build programme and could generate an additional £33.8 million of gross value added for the regional economy during that period. The proposals would help to support the growth of the economy, which has been adversely affected by the current coronavirus pandemic. I give the economic benefits likely to result from the proposals in each case substantial weight.

*Best and most versatile agricultural land*

100. Appeal site B contains land classified as best and most versatile (BMV) agricultural land, which would be lost as a result of the scheme, contrary to the aims of LP1 Policy CS16, which seeks to prevent the loss of such land. However, with reference to the Framework, which indicates that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the economic and other benefits of BMV agricultural land, I consider that LP1 Policy CS16 is unduly onerous. Furthermore, as BMV agricultural land makes up only a very small proportion of the site, I share the view of the appellants that the weight to be given to the loss is very limited.

*Privacy*

101. At present, Hambrook Lodge occupies an isolated position in the countryside, set well apart from other dwellings. In this context the proposed developments on land adjacent to that property would be likely to have some effect on the privacy of the existing residents. However, the elevations of the dwelling that contain the majority of its habitable room windows are set back from the boundaries shared with the appeal sites. I consider that it would be possible to ensure, through careful design and layout of the schemes controlled at the reserved matters stage, that reasonable levels of privacy would be maintained in keeping with the aims of LP1 Policy CS17.

*Community services and facilities*

102. I do not share the concerns raised by a number of residents of the Borough of Gosport that the proposals would adversely affect their community services and facilities. As indicated above, it is likely that spending associated with the schemes would benefit the local economy. As regards facilities, I understand that the appeal sites are not within the catchment area of Gosport schools. Whilst some future residents may wish to use the recreation ground situated to the southeast on the other side of Newgate Lane East, there is no compelling evidence before me to show that the numbers would be large or that such activity would be problematic.

***Planning balance***

103. The Framework indicates, with reference to succinct and up-to-date plans, that the planning system should be genuinely plan-led. For decision making this means approving development proposals that accord with an up-to-date Development Plan without delay. The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites and so in these cases the relevant policy for determining the acceptability of residential development on the site is LP2 Policy DSP40. I consider that each of the schemes would conflict overall with LP2 Policy DSP40. However, in these cases, that is not the end of the matter.
104. LP1 Policy CS2 sets out the housing development needs in the plan period, and Policy CS6 establishes the settlements and allocations to deliver development needs. However, Policy CS2, which pre-dated the publication of the Framework, does not purport to represent an up-to-date Framework compliant assessment of housing needs. The housing requirement set out in the Development Plan has not been reviewed within the last 5 years and so the

five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This generates a higher figure. To my mind, it follows that LP1 Policies CS2 and CS6 are out-of-date. Furthermore, against this background, I consider that the weight attributable to conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6, which place strict controls over development outside settlement boundaries, is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements<sup>9</sup>.

105. Furthermore, as the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, under the terms of paragraph 11 of the Framework it follows that the policies which are most important for determining the appeals are deemed out of date. The Framework indicates that decisions should apply a presumption in favour of sustainable development and, where the policies which are most important for determining the application are out of date, this means granting planning permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole; or, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. This approach is reflected in LP2 Policy DSP1.
106. Under these circumstances, I consider that little weight is attributable to the identified conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6. This is reinforced by my earlier finding that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies would be reduced.
107. LP2 Policy DSP40 is also deemed out of date for the purposes of paragraph 11 of the Framework. However, I consider, for a number of reasons, it does not automatically follow that conflicts with this Policy also attract little weight, contrary to the approach of my colleague who dealt with appeal decision Ref. APP/A1720/W/18/3209865.
108. Firstly, the DSP40 contingency seeks to address a situation where there is a five-year housing land supply shortfall, by providing a mechanism for the controlled release of land outside the urban area boundary, within the countryside and Strategic Gaps, through a plan-led approach. I consider that in principle, consistent with the view of my colleague who dealt with appeal Ref. APP/A1720/W/18/3200409, this approach accords with the aims of the Framework.
109. Secondly, consistent with the Framework aim of addressing shortfalls, it requires that (i) the proposal is relative in scale to the demonstrated supply shortfall and (iv) it would be deliverable in the short-term.
110. Thirdly, criteria (ii) and (iii) are also consistent with the Framework insofar as they: recognise the intrinsic character and beauty of the countryside by seeking to minimise any adverse impact on the countryside; promote the creation of high quality places and having regard to the area's defining characteristics, by respecting the pattern and spatial separation of settlements;

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<sup>9</sup> CDK5-Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37, para 63.

and, seek to ensure that development is sustainably located. They represent a relaxation of the requirements of Policies LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6 in favour of housing land supply. However, I consider that the shortfall in the Framework required five-year housing land supply, which has persisted for a number of years and is larger than those before my colleagues<sup>10</sup>, indicates that the balance they strike between those other interests and housing supply may be unduly restrictive. Under these circumstances, in my judgement, considerable, but not full weight is attributable to conflicts with LP2 Policy DSP40(ii) and (iii).

111. Fourthly, insofar as LP2 Policy DSP40(v) seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications, it is consistent with the Framework and conflict with that requirement would be a matter of the greatest weight.
112. Whilst the proposals would accord with criteria i) and iv), they would conflict with criteria ii), iii) and v), causing significant harm to the character and appearance of the area, having an unacceptable effect on highway safety, they would not be sustainably located with reference to accessibility and they would fail to minimise any adverse impact on the Strategic Gap. I have found that the proposals would conflict with LP2 Policy DSP40, undermining the Council's Spatial Development Strategy. I consider overall that these matters weigh very heavily against each of the proposals.
113. In each case the proposals would provide a mix of housing types and styles. They would make meaningful, albeit modest, contributions towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply. The appeal schemes would also be likely to provide employment opportunities and economic benefits to the area. In these respects the proposals would be consistent with the Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support economic growth. I give those benefits substantial weight. I give little weight to other identified benefits, such as the proposed measures to secure net gains for biodiversity, the minimisation of energy consumption and the prudent use of natural resources. Although I give a number of the benefits substantial weight, in my judgement, it would fall well short of the weight attributable to the harm identified.
114. I consider on balance that, in each case, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits and the schemes would not represent sustainable development under the terms of either LP2 Policy DSP1 or the Framework. In light of these findings, it is unnecessary for me to undertake an Appropriate Assessment. However, if I had done so and a positive outcome had ensued, it would not have affected the planning balances or my conclusions on these appeals.

### **Conclusions**

115. Whilst acknowledging that appeal scheme A would conform with some Development Plan policies, I conclude on balance, with particular reference to LP2 Policy DSP40, that the proposal would conflict with the Development Plan taken as a whole. Furthermore, the other material considerations in this case

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<sup>10</sup> APP/A1720/W/18/3199119, APP/A1720/W/18/3200409

would not justify a decision other than in accordance with the Development Plan. For the reasons given above, I conclude that appeal A should be dismissed.

116. Whilst acknowledging that appeal scheme B would conform with some Development Plan policies, I conclude on balance, with particular reference to LP2 Policy DSP40, that the proposal would conflict with the Development Plan taken as a whole. Furthermore, the other material considerations in this case would not justify a decision other than in accordance with the Development Plan. For the reasons given above, I conclude that appeal B should be dismissed.

*I Jenkins*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

**Mr D Lintott**

Of Counsel

He called

**Mr I Dudley**

BSc(Hons) MICFor CEnv CMLI

**Mr C Whitehead**

BEng CEng

**Mr J Mundy**

MSc IMICE

**Mr N Sibbett**

CEcol CMLI CEnv MCIEEM

**Ms J Parker**

BA(Hons) MA MRTPI

**Mr R Wright** (conditions/obligations)

**Mr N Gammer** (conditions/obligations)

MSc MCIHT MTPS

**H Hudson** (conditions/obligations)

Solicitor

Lockhart Garratt Ltd

SYSTRA Ltd

Hampshire County Council

The Landscape Partnership

Adams Hendry Consulting Ltd

Fareham Borough Council

Hampshire County Council

Southampton City Council

### FOR THE APPELLANTS:

**Mr C Boyle**

QC

He called

**Mr J Atkin**

BSc(Hons) DIP LM CMLI

**Mr N Tiley**

ARTPI

**Miss M Hoskins**

BA(Hons) MCIHT

**Mr A Jones**

BSc(Hons) MCIHT

**Mr D West**

MEnv Sci(Hons) CEnv MCIEEM

**Mr D Weaver**

BA(Hons) MA MRTPI

**Mr C Marsh** (conditions/obligations)

Pegasus Group

Pegasus Group

Red Wilson Associates

Pegasus Group

WYG

Pegasus Group

Pegasus Group

### INTERESTED PERSONS:

**County Councillor P Hayre**

The Crofton Division of Fareham

**Mrs A White**

**Mr A Thomas**

**Borough Councillor J Forrest**

The Stubbington Ward

**Mr B Marshall**

**County Councillor S Philpott**

The Bridgemary Division

**Mrs A Roast**

**Borough Councillor C Heneghan**

The Stubbington Ward

Interested party

Local resident

Local resident

Interested party

Fareham Society

Interested party

Lee Residents' Association

Interested party

## DOCUMENTS

- 1 Letters notifying interested parties of appeals A and B.
- 2 Appeals notification responses
- 3 Councillor Philpott-updated proof of evidence
- 4 Ms Parker-revised appendices to proof of evidence and errata
- 5 Council-opening statement
- 6 Appellants-opening statement
- 7 Councillor Forrest-proof of evidence
- 8 Statement of Common Ground (Transport)
- 9 Fareham Society-updated proof of evidence
- 10 Councillor Philpott-updated proof of evidence
- 11 Mr Thomas-email dated 10 February 2021
- 12 Red Wilson Associates-Delay Tables Summary Note
- 13 Mr Thomas-email dated 11 February 2021
- 14 Gosport Borough Council-Additional submissions regarding the Newgate Lane South Appeals (12 February 2021)
- 15 Community Infrastructure Levy Regulations Compliance Statement (including education contributions email dated 9 November 2020 and Planning Obligations Supplementary Planning Document
- 16 Bargate Homes-Delivery Rate Update, dated 16 February 2021
- 17a Composite masterplan
- 17b Settlement boundaries proximity plan
- 17c Land south of Funtley Road Committee Report Ref. P/18/0067/OA
- 17d Consolidated conditions schedule
- 18 Mrs White-proof of evidence
- 19 Natural England guidance documents and Conservation Objectives.
- 20 Gosport Borough Council-Additional submissions regarding the Newgate Lane South Appeals (12 February 2021)-references included.
- 21 Land south of Funtley Road Committee Report Ref. P/18/0067/OA, dated 18/07/2018.
- 22 Ms Parker- response to Inquiry document 16
- 23 Council's letter withdrawing reason for refusal (h)-appeal A and (G)-appeal B insofar as they relate to the capacity of the junction of old Newgate Lane/Newgate Lane East
- 24 Fareham Society-proof of evidence summary
- 25 Ms Hoskins-Linsig model results, junction layouts note and extract from the Highway Code
- 26 Highway Authority-Note dated 18 February 2021 regarding highway capacity point raised by Gosport Borough Council
- 27 Councillor Philpott-supplementary notes
- 28 Councillor Hayre-proof of evidence
- 29a Mrs White-proof of evidence summary
- 29b Mrs Roast-proof of evidence summary
- 30 Updated Report to inform HRA Stage 1 and Stage 2
- 31 Plan-Gosport Road Fareham Air Quality Management Area 2017 (A)
- 32 Gosport Borough Council Ward Maps-Peel Common and Bridgemary North

- 33 Pegasus-1) Traffic Flows at the old Newgate Lane and Newgate Lane East Junction and 2) 21 and 21A Bus Service
- 34 Birds Unilateral Undertaking-update
- 35 Appeal A-Main Unilateral Undertaking
- 36 Highway Authority-Note in response to new information provided by the appellants under cross examination of Ms Hoskins, Ms Parker-note on settlement terminology and Mr Gammer-updated proofs of evidence.
- 37 Councillor Philpott-email dated 19 February 2021, air quality clarification
- 38 Tetra Tech-Note on Winter Bird Mitigation Area Nitrogen Budget, 23 February 2021
- 39 Council-email dated 23 February 2021, consultation responses
- 40 Council/appellants-Consolidated Conditions Schedule
- 41 Council-Boundary plans related to Brookers Lane
- 42 Pegasus-Newgate Lane East Capacity note
- 43 Ms Parker-Status and weight of Local Plan Evidence Based Landscape Documents
- 44 Mr Sibbett-Note on qualifying features
- 45 Fareham Society-closing statement
- 46 Highway Authority-Note addressing queries relating to the southern site Unilateral Undertaking
- 47 Planning Inspectorate-contaminated land model conditions
- 48 Councillor Heneghan-consultation response, dated 29 October 2018
- 49 Lee Residents Association-Closing statement
- 50a Council/appellants-additional conditions
- 50b Pegasus-scale and density note
- 51 Councillor Heneghan-proof of evidence
- 52a The Civil Engineering Practice-Technical Note on Flood Risk and Discharge Restriction
- 52b Appeal A-Main Unilateral Undertaking-tracked changes
- 53 Pegasus note-Ownership and status of the Brookers Lane shared footway/cycleway between Newgate Lane East and Bridgemary
- 54 Ms Parker-Further advice on the consultation responses to the Fareham Landscape Assessment (FLA)(2017)(CDG15)
- 55 Tetra Tech-Report to inform Habitats Regulations Assessment Stage 1 and stage 2-updated
- 56 Acon Uk-Air Quality note
- 57 Birds Unilateral Undertaking-update (tracked changes)
- 58 Council-closing statement
- 59 Council-email confirmation, dated 25 February 2021, of the red line site boundary drawing numbers for the applications
- 60 Birds Unilateral Undertaking-update
- 61 Appellants-closing statement
- 62 Formally completed unilateral undertakings

**Land South of Romsey Avenue, Portchester**

**PINS Ref: APP/A1720/W/21/3271412 (LPA Ref: 18/1073/FP)**

**Statement of Common Ground: Five Year Housing Land Supply**

*8<sup>th</sup> July 2021*

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**1. Introduction**

- 1.1. This Housing Land Supply (“HLS”) Statement of Common Ground (“SoCG”) has been prepared by Mr Steven Brown (of Wolf Bond Planning), on behalf of the Appellant, Foreman Homes Ltd and Richard Wright on behalf of Fareham Borough Council. It sets out both the agreed and disputed matters having regard to the five year housing land supply position.
- 1.2. This HLS SoCG identifies the requirement to be met during the five year period, the deliverability of the identified components of supply; and the subsequent five year housing land supply positions of the respective parties.

**2. The Agreed Position**

- 2.1. It is common ground that the Council is not able to demonstrate a five year supply of deliverable housing land against the minimum five year requirement for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 2.2. As such, it is common ground that the Council is not meeting paragraph 59 of the NPPF and, by virtue of footnote 7, paragraph 11(d) is engaged unless disapplied by virtue of paragraph 177.
- 2.3. The shortfall will only be rectified if planning approval is given for housing on sites not originally envisaged for housing in the adopted Local Plan Parts 1 and 2 or through plan-led development delivered through the emerging Local Plan.
- 2.4. In the circumstances, the most important, operative policy for determining the acceptability of residential development on the Site is Policy DSP40.

**3. The Housing Requirement and Five Year Period**

- 3.1. It is agreed between the parties that the five year period to be used for the purpose of calculating the five year housing land supply position for this appeal is 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 3.2. In so far as the strategic policies from the Core Strategy and Development Sites and Policies DPD are more than five years old, it is agreed, by operation of paragraph 73 and footnote 37 of the NPPF, that **the housing requirement falls to be measured against the local housing need figure calculated using the standard method.**

- 3.3. A such, the starting point to calculating the five year requirement is the minimum **539 dwelling annual requirement** derived from the application of the Standard Method. This equates to 2,695 dwellings requirement.
- 3.4. However, and as a result of the Housing Delivery Test (“HDT”) results published in February 2021, it is agreed that it is appropriate to apply a 20% buffer to the requirement.
- 3.5. This results in a minimum five year requirement of **3,234 dwellings for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.**

**4. Housing Supply**

- 4.1. The Council maintains it has a five year supply of 2,310 dwellings. This results in a shortfall of 924 dwellings and a supply of 3.57 years.
- 4.2. The Appellant identifies a supply of 600 dwellings. This results in a shortfall of 2,634 dwellings and a supply of only 0.93 years.
- 4.3. The respective positions are summarised in Table 1 below.

*Table 1: Respective Five Year Housing Supply Positions*

	<b>Fareham Borough Council</b>	<b>Appellant</b>
Minimum 5yr Req. 1 Jan 2021 to 31 Dec 2025	3,234	3,234
Deliverable Supply	2,310	600
Extent of Shortfall	-924	-2,634
No. Years Supply	3.57yrs	0.93yrs

- 4.4. The supply differences are set out in **Appendix 1** attached
- 4.5. As set out above, and on either approach, it is agreed that the Council is unable to demonstrate a five year supply of deliverable housing land.

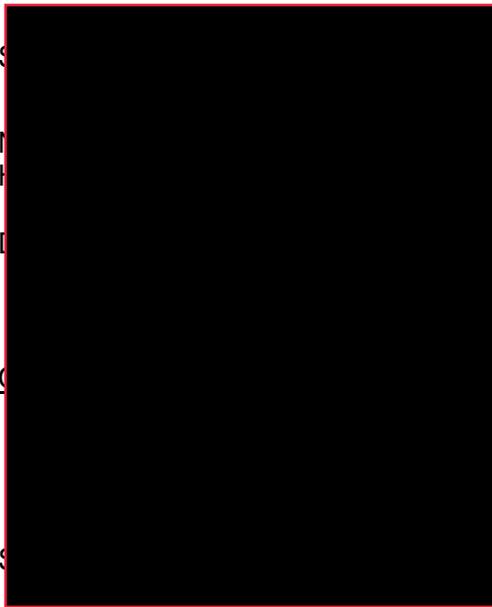
**5. Implications of the Respective Five Year Positions**

- 5.1. The agreed position between the Council and Appellant is that the Council is not able currently to demonstrate a five year supply of deliverable housing land for the period 1st January 2021 to 31st December 2025.
- 5.2. As such, it is common ground between the Council and Appellant that the Council is not meeting paragraph 59 of the NPPF, thus engaging the presumption in favour of sustainable development at paragraph 11(d) of the NPPF unless disapplied by virtue of paragraph 177.
- 5.3. Whilst the Council and Appellant disagree as to the extent of the shortfall, it is nevertheless agreed, on either position, that the shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant. As such it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall.

- 5.4. In the light of the agreement reached between the parties in relation to the significance of the five year housing land supply shortfall, neither party will call their respective witnesses to deal with housing land supply matters unless such evidence is requested by the Inspector. This will save time and resources and will enable a more efficient inquiry process.
- 5.5. This HLS SoCG is signed and dated below.

### **Signatures**

On behalf of the Appellant:



P MRTPI (Woolf Bond Planning obo Foreman

il

Name: Richard Wright MRTPI Fareham Borough Council

Date: 8<sup>th</sup> July 2021

\*\*\*\*\*

## Appendix 1: Site Delivery

The following table sets out the respective positions in relation to the deliverability of the components of supply.

Supply source	Revised Council <sup>1</sup>	WBP	Difference
Outstanding Planning Permissions – Small (104 dwellings) (10% discount)	69	69	0
Outstanding Full Planning Permissions – Large (5+ dwellings)	402	402	0
Outstanding Outline Planning Permissions – Large (5+ dwellings)	296	27 <sup>2</sup>	269
Resolution to Grant Planning Permission – Large (5+ dwellings) (exc Welborne)	742 <sup>3</sup>	0	742
Resolution to Grant Planning Permission – Large (5+ dwellings) (Welborne)	390	0	390
Brownfield Register Sites	276	0	276
Local Plan Adopted Housing Allocations	33	0	33
Windfall	102	102	0
<b>Total</b>	<b>2,310</b>	<b>600</b>	<b>1,710</b>

<sup>1</sup> Supplementary Statement to Newgate Lane East Appeal (3269030)

<sup>2</sup> Sites included in this category by WBP are: Egmont Nurseries, Brook Avenue (8 dwellings); 18 Titchfield Park Road, Titchfield (6 dwellings); east & west of 79 Greenaway Lane (6 Dwellings) and Burridge Lodge (7 dwellings)

<sup>3</sup> Paragraph 5.8 of the Council's Supplementary Statement for Newgate Lane East Appeal indicates that this figure should be 663.

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:

Mr

First Name:

Steve

Last Name:

Carrington

Job Title: (where relevant)

Organisation: (where relevant)

Foreman Homes Ltd

c/o Agent

Address:

Postcode:

Telephone Number:

Email Address:

A3 Please provide the Agent's details:

Title:

Mr

First Name:

Steven

Last Name:

Brown

Job Title: (where relevant)

Organisation: (where relevant)

Woolf Bond Planning

Address:

Postcode:

Telephone Number:

Email Address:

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1, HA1 and HP4**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
8. Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015)
9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in a parcel of the Strategic Allocation known as land North and South of Greenaway Lane, Warsash. Foreman Homes have specific interest in Land west of Lockwood Road. The site has not been assessed individually as part of the SHELAA but there is a live outline application for 80 dwellings (18/0590/OA).
- 1.2. As such, the Site has been promoted through earlier stages of the Local Plan process as sustainable urban extension to Fareham, an acknowledged suitable location for growth within the Borough as indicated in the SHELAA.
- 1.3. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore advocate changes to the Local Plan to address this, whilst supporting the allocation for the land North and South of Greenaway Lane.
- 1.4. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
- 1.5. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## **2. REPRESENTATIONS AND SUPPORTING INFORMATION**

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)

2.2. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection
Policy HA1 – North and South of Greenaway Lane	Support

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
  
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
  
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
  
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
  
- 3.4. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities. It is imperative that the allocation of land north and south of Greenaway Lane is promoted to ensure there is a large contribution towards housing supply thus helping to resolving this issue.

- 3.5. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
  
- 3.6. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, FBC has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement asset out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.

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<sup>7</sup> (541 x 18) + 1,000

5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

- 5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.
- 5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

## **Conclusions**

- 5.33. The housing requirement and delivery as set out in Policy H1 cannot be said to be sound as it fails to provide for at least 15 years post adoption together with a failure to plan for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### **Changes sought to the Development Requirements in Policy H1.**

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and like Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;

- c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
  
- d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.

5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.

- 1. That policy H1 is amended to:
  - A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
  
- 2. That consequential amendments are made to the document to reflect these revisions.

## **6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY**

### **General**

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

- 6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.
- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Portchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.

- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
  - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
  - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
  - d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
  - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
  - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

- 6.10. The Inspector’s conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.
- 6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client’s omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 10**):
- 6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.
- 6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 10** is that the shortfall is much greater than purported to be the case by the Council.
- 6.14. The below Table provides a comparison between the housing land supply position set out in the Council’s Published Report to Committee in February 2021, the Council’s updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 10**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

- 6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.
- 6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

### **Suggested Changes to Policy HP4**

- 6.17. Policy HP4 cannot be said to be sound in respect of the following:
- a) Not positively prepared as the policy (alongside others in the document) will fails to provide an effective solution towards maintaining a five years supply of housing,
  - b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.
- 6.18. To address these matters of soundness, the following amendments is proposed:
- 1. That clause c is omitted from policy HP4.

## **7. POLICY HA1: LAND NORTH AND SOUTH OF GREENAWAY LANE**

### **General**

- 7.1. Foreman Homes have an interested in a parcel of land, Land West of Lockwood Road, which is part of the larger allocation known as land North and South of Greenaway Lane which has a yield of 824 dwellings. The parcel of land, known hence forth as ‘the site’ has a live outline planning for 80 dwellings.
- 7.2. The Site is well related to the urban area. It is not in a strategic gap and nor is it identified as a valued landscape. Moreover, the Site affords a sustainable location in helping to meet identified housing needs.
- 7.3. The Site has a live outline planning permission with all matters reserved (except for access) for residential development of up to 80 dwellings, associated landscaping amenity areas and access from Lockwood Road (LPA Ref: P/18/0590/OA).
- 7.4. Comments raised during the consultation have been addressed with the only outstanding matter relating to nitrate mitigation.
- 7.5. Foreman Homes are entering into an agreement to buy credits from Heaton Farms Ltd at Land at Coleman’s Lane, IOW to offset the nitrate load from the proposed development therefore overcoming the issue.
- 7.6. The development has numerous benefits including the provision of much needed housing in a sustainable location, delivery of affordable housing and a form of development, including by means of the proposed landscaping strategy that can be assimilated into the character of the surrounding area without having an adverse impact upon the wider landscape setting of the site.
- 7.7. The lack of objection from consultees on the planning application demonstrates that the development of this site is acceptable and therefore the continued promotion of the site as part of the larger Warsash allocation is welcome.

## **Change sought to the Local Plan**

- 7.8. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **land north and south of Greenaway Lane should continue to be promoted for residential development.**

## **8. OVERALL CONCLUSIONS**

- 8.1. Our representations have identified a number of concerns with the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
- 8.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.
- 8.3. These matters can be addressed through Main Modifications.

## **9. FINAL REMARKS**

- 9.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 9.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations.
- 9.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:	Mr
First Name:	Steve
Last Name:	Carrington
Job Title: (where relevant)	
Organisation: (where relevant)	Foreman Homes Ltd
	c/o Agent
Address:	
Postcode:	
Telephone Number:	
Email Address:	

A3 Please provide the Agent's details:

Title:	Mr
First Name:	Steven
Last Name:	Brown
Job Title: (where relevant)	
Organisation: (where relevant)	Woolf Bond Planning
Address:	
Postcode:	
Telephone Number:	
Email Address:	

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                 Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Complies with the duty to co-operate	<input checked="" type="checkbox"/>	<input type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
E1 and E4b**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in land north of Military Road, Wallington. The Site has been assessed in the SHELAA as Site Ref: 3034.
- 1.2. As such, the Site has been promoted through earlier stages of the Local Plan process and has been acknowledged as a suitable location for growth within the Borough as indicated in the SHELAA.
- 1.3. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy E1 – Employment Land Provision	Support
Policy E4b – Land North of Military Road, Wallington	Support

## **2. POLICY E1: EMPLOYMENT LAND PROVISION**

### **General**

- 2.1 Policy E1 indicates that the Local Plan must make a provision for 121,964m<sup>2</sup> of new employment floor space over the period of 2021-2037. This provision is identified through a number of site allocations
  
- 2.2 The policy is in accordance with the National Planning Policy Framework's aim in building a strong, competitive economy, providing a range of types of sites throughout the borough to meet needs of future users. This policy is therefore supported.

## **3. POLICY E4d: FIVE-YEAR HOUSING LAND SUPPLY**

### **General**

- 3.1. Having regard to the representations and the earlier promotion of the site for the development for the purpose of employment, the evidence justifies the allocation of the site for 4750m<sup>2</sup> of employment space.
  
- 3.2. The Site is in an area that has an overriding 'urban fringe' character, due to the urban character of the adjoining industrial estate and waste transfer station. Visibility of the site is relatively limited due to existing vegetation. Access can be provided via Military Road.
  
- 3.3. The Site is currently subject to an outline application for up to 22 units of employment space and access from Military Road, Wallington (LPA Ref: P/20/0636/OA).
  
- 3.4. Foreman Homes commissioned CBRE to undertake a Market Assessment to demonstrate the need for this development in this area of the Borough. The Assessment concluded that there is a significant demand for employment units in Fareham and the wider Solent Region. It is therefore necessary to retain this allocation in future publications.

- 3.5. Policy sets out four criteria that any future development on this site must adhere to. The application adheres to all these points and is therefore considered acceptable and sustainable.

#### **4. CONCLUSION**

- 4.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 4.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations, including the allocation of our client's site at Military Road, Wallington.
- 4.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.



The Planning Inspectorate

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# **Report to Tonbridge and Malling Borough Council**

**by Louise Crosby and Luke Fleming**

**Inspectors appointed by the Secretary of State**

**Date: 07 June 2021**

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Planning and Compulsory Purchase Act 2004  
(as amended)  
Section 20

## **Report on the Examination of the Tonbridge and Malling Borough Council Local Plan**

The Plan was submitted for examination on 23rd January 2019

The examination hearings were held between 6th and 8th October 2020

File Ref: PINS/H2265/429/8

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## **Abbreviations used in this report**

DtC	Duty to Co-operate
HMA	Housing Market Area
LPA	Local Planning Authority
MoUs	Memorandums of Understanding
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
SDC	Sevenoaks District Council
the Act	Planning and Compulsory Purchase Act 2004 (as amended)
the Plan	Tonbridge and Malling Borough Local Plan

## **Non-Technical Summary**

This report concludes that the Tonbridge and Malling Borough Local Plan (the Plan) is not legally compliant in respect of the Duty to Cooperate (DtC) and, as such, we recommend that the Plan is not adopted.

## Introduction

1. This report contains our assessment of the Tonbridge and Malling Borough Local Plan in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended) (the Act). It considers whether the Plan's preparation has complied with the duty to co-operate (DtC).
2. The revised National Planning Policy Framework (NPPF) was published in July 2018 and further revised in February 2019. It includes a transitional arrangement in paragraph 214 which indicates that, for the purpose of examining this Plan, the policies in the 2012 NPPF will apply. Similarly, where the Planning Practice Guidance (PPG) has been updated to reflect the revised NPPF, the previous versions of the PPG apply for the purposes of this examination under the transitional arrangement. Therefore, unless stated otherwise, references in this report are to the 2012 NPPF and the versions of the PPG which were extant prior to the publication of the 2018 NPPF.
3. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound Plan. The Tonbridge and Malling Borough Local Plan, submitted on 23 January 2019, is the basis for our examination. It is the same document as was published for consultation between 1 October 2018 and 19 November 2018.
4. This report considers whether the Plan's preparation has complied with the DtC. Given our conclusion in relation to the DtC, we do not go on to consider whether the Plan is sound and whether it is compliant with other legal requirements. If a local planning authority cannot demonstrate that it has complied with the DtC at the independent examination of their local plan, then Section 20(7A) of the Act requires that the examiner must recommend non-adoption of the Plan. This is the situation in this case, and it is not, therefore, relevant for us to consider the other matters in this Report. Accordingly, we have not recommended any main modifications.
5. Hearing sessions were held between 6 and 8 October 2020 and they focussed on legal compliance matters including the DtC and Sustainability Appraisal.
6. Further hearing sessions were planned as part of the examination from 3-5 November and on 10 November 2020 to consider other soundness issues. However, following our consideration of the evidence presented by Tonbridge and Malling Borough Council (the Council) and other participants in response to our Matters, Issues and Questions<sup>1</sup> at the hearing session in relation to DtC, and taking into account written representations and discussion at that hearing session we notified the Council in a letter<sup>2</sup> dated 22 October 2020, that we had

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<sup>1</sup> ED56

<sup>2</sup> ED67

significant concerns in respect of legal compliance. The letter also explained that we had asked the Programme Officer to cancel the hearings planned for November 2020 and that we would be writing to the Council as soon as possible setting out our specific thoughts in more detail. The letter also advised that we would not reach a final conclusion on the way forward for the examination until we had had a chance to consider the Council's response to that letter.

7. Our letter<sup>3</sup> to the Council, dated 15 December 2020, set out our concerns with regards to the DtC in some detail. The Council submitted a response dated 29 January 2021<sup>4</sup>, along with a number of appendices. Having fully considered the Council's response and appendices, our final letter<sup>5</sup>, to the Council, dated 2 March 2021, set out our conclusions on this matter and stated that, there were two options before the Council; either to withdraw the Plan from examination or we would write a final report recommending its non-adoption because of a failure to meet the DtC. We gave the Council 21 days to consider which option they wished to pursue. On 11 March 2021 the Council confirmed that it would not be withdrawing the Plan and invited us to prepare a final report at our earliest convenience<sup>6</sup>.

## **Assessment of Duty to Co-operate**

### **Background**

8. Section 20(5)(c) of the Act requires that we determine whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
9. Section 33A of the Act imposes a duty on a local planning authority to co-operate with other local planning authorities, the County Council and prescribed bodies or other persons by engaging constructively, actively and on an ongoing basis in relation to the preparation of a development plan document so far as relating to a strategic matter to maximise the effectiveness of the activity of plan preparation. It makes clear that sustainable development or use of land that would have a significant impact on at least two planning areas is such a strategic matter. Account can only be taken of the engagement undertaken by authorities up to the point of submission of the Plan, as the assessment of compliance with the DtC only relates to the preparation of the Plan.
10. Government policy in the 2012 NPPF paragraphs 178 to 181 sets out the importance placed on planning strategically across boundaries. Paragraph 181

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<sup>3</sup> ED68

<sup>4</sup> ED69

<sup>5</sup> ED81

<sup>6</sup> ED82

states that "local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination" and that "cooperation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development".

11. It is not disputed by the Council that housing is a strategic matter for the purposes of S33A of the Act, which required cooperation as set out above. Whether the DtC has been complied with is a matter of judgement for the examining Inspectors following consideration of the evidence presented by the Council and other participants, both in writing and at the hearing sessions.
12. Sevenoaks District Council (SDC) considers that it is unable to meet all of its own housing needs. It is a neighbouring local authority and forms a large part of the West Kent Housing Market Area (HMA) which also includes a significant part of Tonbridge and Malling Borough, as well as parts of Tunbridge Wells Borough. Our report will focus on the engagement of the Council with SDC, in relation to housing across the HMA. The NPPF (para 47) states that local planning authorities (LPAs) should use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for housing in the HMA, as far as is consistent with the policies set out in this Framework.

**Did the Council know that Sevenoaks District Council considered that it would be unable to meet its own housing needs in full, prior to the submission of their plan for examination in January 2019?**

13. The Council explained at the hearings that it was not clear until SDC's Regulation 19 (of the Town and Country Planning (Local Plan) (England) Regulations 2012 (the Regulations)) Plan was published in December 2018 what the scale of unmet need was and even then it was not certain as the Plan had not been examined by an Inspector and the housing need and requirement found sound. As set out above, the Tonbridge and Malling Regulation 19 Plan was submitted for examination on 23 January 2019 which was before the transitional deadline of 24 January 2019, set out in paragraph 214 of Annex 1 to the July 2018 and February 2019 versions of the NPPF.
14. At the hearings the Council's view was that until SDC's Plan had been consulted on there was uncertainty about whether there was any unmet need and the basis for that. Furthermore, there had not been a process of examination to demonstrate that there were unmet needs and even if there were unmet needs there was a chance that they could be quite small. However, SDC's Regulation 18 Plan which it consulted on, between July and September 2018, identified a need for 13,960 dwellings and identified sites to

meet between 6,582 and 13,382 dwellings<sup>7</sup>. So, at this stage it was clear there was a likely shortfall of at least around 600 dwellings, and this was the best case scenario. At worst it was closer to approximately 7000. While the level of unmet need and the justification for it could be a matter for debate, there is enough here to demonstrate that this was a strategic matter on which cooperation was required. In the submitted SDC Regulation 19 Plan the unmet need was in the order of 3,392 dwellings<sup>8</sup>. The calculation of housing need is not an academic exercise, it is a question of identifying an actual local need.

15. However, much earlier than this, in October 2017 when SDC were at their 'issues and options' stage of plan preparation, the Council wrote to SDC (ED78B), saying, "At this stage and based on the evidence available it is highly unlikely that there would be supportable reasons or indeed the capacity for meeting any unmet need from Sevenoaks in Tonbridge and Malling".
16. This was at a stage in the process when officers in a report to Tonbridge and Malling Council's Planning and Transportation Advisory Board (ED78A), in December 2017, advised that SDC, unlike Tonbridge and Malling Council, was not planning to release Green Belt land to meet its housing need. It also says that, even with some Green Belt releases, "the conclusion is that Sevenoaks will be a significant way adrift from meeting its identified housing needs". So, in our view, it is clear that the Council knew in 2017 that SDC would be likely to reach the judgement that it would be unable to meet its own housing needs in full, even with Green Belt release.
17. The Council's views on market capacity are informed by a Housing Delivery Study (CD HO3) which was published in September 2017. The purpose of the Study was to consider the market capacity and potential pace of housing delivery within the Borough to inform the development of the emerging Local Plan. However, paragraph 1.7 says that "emerging evidence suggests that a number of neighbouring authorities may not be able to meet in full their objectively assessed housing need. Some authorities may therefore ask TMBC whether it is able to help to address an unmet housing need arising". Paragraph 4.8 advises that "...in addition to Tonbridge and Malling's own housing needs, the Council has a Duty to Cooperate with neighbouring authorities and is likely to need through the plan-making process to consider the potential to contributing to meeting unmet housing needs from beyond the borough boundary. A core role of this study is to consider what additional housing delivery the market could potentially accommodate".

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<sup>7</sup> Page 2 of letter dated 28 October 2019, from the Inspector examining the SDC Plan

<sup>8</sup> Paragraph 14 of the Report on the Examination of SDC Plan, dated 2 March 2020

18. It is clear then that one of the motivations for the September 2017 Study was to consider the issue of unmet needs arising in a number of neighbouring authorities. Irrespective of a number of technical concerns raised by representors with regard to whether this evidence demonstrates market capacity issues or not, in our view the Housing Delivery Study is further evidence that shows that the Council knew in 2017 that SDC had or was likely to have unmet need and that they may be asked for help with meeting the need.
19. Also, it is well documented that the Council, along with SDC and Tunbridge Wells were involved in a pilot scheme (West Kent Statement of Common Ground Pilot Project), which appears to have started in 2017. This pilot scheme with the Planning Advisory Service (PAS) was set up to look at the use of Statements of Common Ground in plan making. Paragraph 6.6 of the PAS facilitator's notes, dated April 2018, says "Each of the Council's has a clear figure for its housing need, but whilst Tonbridge and Malling BC is confident that it can meet its need, Sevenoaks DC and Tunbridge Wells BC have not yet completed the work needed to determine whether or not they can meet their housing need. Thus the Councils are not yet in a position to reach agreement on the matter of housing supply". However, paragraph 6.3 of the same notes says, "This may increase the housing land supply but it remains unlikely that Sevenoaks DC will be able to meet its housing need in full". This shows that it was known then that there was likely to be some unmet need in SDC, albeit there was no firm figure.
20. In summary, it appears from the evidence before us that the Council knew for a number of years, prior to the submission of their Plan for examination, that it was highly likely that SDC would reach the judgement that it would be unable to meet its housing need in full. While the scale of the unmet need was uncertain, the overall position was clear well in advance of the submission of the Plan for examination in January 2019. It should, therefore, have been obvious to the Council that this was a strategic matter to which the DtC applied.
21. This should have led to the Council engaging constructively, actively and on an ongoing basis with SDC on unmet housing needs, regardless of whether this was a precise figure or a range, or indeed whether the Council felt it may not be able to accommodate the unmet need in full or in part. The requirement of the Act is for authorities to actively engage to maximise the effectiveness of plan preparation.

**Did the Council engage constructively, actively and on an ongoing basis with SDC on unmet housing needs?**

22. In the Council's Duty to Cooperate Statement (CD SC1), section 8 deals with Cross-Boundary Issues. The table in paragraph 8.1 of this document sets out the strategic cross boundary issues, the key neighbouring authorities/organisations in relation to each issue and the summary of cooperation. Under the housing section of this table the key neighbouring authorities/organisations are listed as Maidstone Borough Council, Ashford Borough Council, Kent County Council and Highways England. It seems that the limited extent of this table is because it only covers authorities where cross boundary issues are specifically covered in the Plan. Nowhere in this document, which is dated January 2019, and therefore postdates the publication of the SDC Regulation 19 Plan on 18 December 2018, is there any mention of unmet housing need in SDC. If there had been any constructive, active and ongoing engagement with SDC ahead of submission on what was clearly a strategic matter, it would be reasonable to expect that this would at least be mentioned in the Council's DtC statement.
23. As set out above, it was apparent from as early as October 2017 there were clear signs that SDC was likely to conclude that it would not be able to meet its housing needs in full. It seems that regular meetings were held between the Council and SDC during the preparation of the Council's Plan, but there is no evidence that unmet housing need in SDC was discussed at these meetings and no meeting minutes have been provided to evidence that housing needs were discussed. The Council say that the discussion was predominantly about 'constraints' to meeting housing needs but no minutes of any of these meetings have been produced as evidence of what was actually discussed. Consequently, there is no evidence before us, that these meetings were used for constructive and active engagement in an attempt to resolve the strategic matter of unmet housing need and maximise the effectiveness of plan preparation.
24. The Council argue that SDC did not formally ask them for help and it was not up to the Council to "make the running", but this is a circular argument with a risk that both parties defer the issue to the other without any meaningful attempt to resolve it. We are obliged to consider whether the Council cooperated and the question of whether or not SDC made any running does not remove the obligation on the Council, particularly as the issue of unmet housing need in Sevenoaks appeared to be well known to both. Moreover, it is clear from the Council's letter sent to SDC in October 2017, where they say "At this stage and based on the evidence available it is highly unlikely that there would be supportable reasons or indeed the capacity for meeting any unmet need from Sevenoaks in Tonbridge and Malling", that such a request would have been likely to be pointless. The letter was therefore a

discouragement to constructive, active and ongoing engagement, because it can reasonably be read as closing the door to cooperation. Indeed, there does not appear to have been much engagement for the next 15 months or so, up to the submission of the Plan for examination. In fact, very little evidence of any meaningful engagement in relation to this particular strategic matter has been submitted for us to take into account.

25. The Council explained at the hearings that, if they had delayed the submission of the Plan to try to accommodate some of the unmet need from SDC, once the SDC Regulation 19 Plan was published in December 2018, they would have had to effectively start plan preparation again. This is because they would have missed the transitional deadline in NPPF paragraph 214 and their housing need would have increased by around 3000 dwellings, due to the introduction of the standard method in the 2018 and 2019 versions of the NPPF<sup>9</sup> and related PPG. Whilst this may have been so, it is not an adequate or legally compliant reason to not engage. Early engagement in 2017, when there was first evidence that SDC were unlikely to be able to meet their housing need, would not necessarily have caused delays to the overall process and to the Council meeting the transitional deadline<sup>10</sup>. Furthermore, the decision to push ahead to submit on or before the 24 January 2019 was entirely a choice made by the Council. Importantly, even if no agreement had been reached on the matter, if constructive, active and ongoing engagement had taken place from the earliest stages of preparation of the Plan, the Plan would have been found legally compliant in relation to the DtC.
26. The conclusion of the SDC Regulation 18 consultation, in September 2018, was some four months prior to the submission of the Plan for examination. At this point the unmet need was still a range and would only be confirmed on conclusion of the Sevenoaks examination. This is something the Council argue is necessary before active and constructive engagement can commence, but we strongly disagree. It should have been clear at this time (i.e. four months prior to submission of the Plan), if not earlier, that there was a strategic matter relating to unmet housing need which required addressing through constructive engagement, regardless of the lack of clarity at the time over the precise volume of unmet need.
27. Whilst it was not clear in 2017, or even later in the process, at the Regulation 18 consultation stage, what the exact level of unmet need was or would be, the fact that SDC considered there was likely to be some unmet need should have led to constructive, active and ongoing engagement between the Council and SDC at that point and subsequently.

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<sup>9</sup> NPPF 2019 Paragraph 60

<sup>10</sup> NPPF 2019 Annex 1, paragraph 214

28. The Council advise that, like SDC, they have large amounts of Green Belt land, which is a constraint to meeting housing needs other than their own. Both authorities have significant areas of Green Belt as well as land in Areas of Outstanding Natural Beauty (AONB). The Council carried out a Green Belt review of land in their own administrative boundary, leading to the release of some Green Belt land in the Plan as well as a proposal to put some land into the Green Belt.
29. However, there is no evidence that at any time the Council cooperated or even considered cooperating with SDC on a joint review of the Green Belt across both of their boundaries to understand the comparative quality across the two authority areas and any potential to amend Green Belt boundaries to fully or more fully meet needs. Nor was there any joint work to assess and reach an agreement on the housing capacity on non Green Belt areas across both authorities or on how that capacity might reasonably be maximised. The Council say the reason for this is that the two LPAs were at different stages of plan making, however the plans were submitted for examination within months of each other. In addition, the fact that the Council disagreed with SDC on the approach they were taking to Green Belt release did not mean the DtC did not apply and could be ignored.
30. In terms of the Council's position about relative timescales, the Council's Regulation 19 Plan was published for consultation on 1 October 2018, around 3 weeks after the conclusion of the SDC Regulation 18 consultation. SDC published their Regulation 19 Plan for consultation on 18 December 2018 and so the fact is the plan-making timescales and processes in Tonbridge and Malling and SDC were actually closely aligned. We can find no credible reason why the Councils could not have engaged constructively and actively during the plan making process in accordance with the duty on them to engage constructively with each other in a meaningful attempt to resolve issues relating to unmet needs.
31. Whilst resolution to the problem of unmet housing needs is not a prerequisite to the Council being able to demonstrate compliance with the DtC, earlier, constructive, active and ongoing engagement, in line with the Act and national policy as articulated in the Framework and PPG, would have been much more likely to result in an effective strategy for meeting SDC's need, whether within the SDC area or elsewhere. Even if in this case the Council considered it unrealistic to contemplate a joint local plan at this point, it might have considered other less formal mechanisms of compliance with the duty, such as aligning plan time-tables and policies and/or joint approaches to plan-making. Any steps of that kind would have demonstrated positive proactive attempts at cooperation.

32. The Council's hearing statement<sup>11</sup>, submitted to SDC's examination, explains the Council's view that it would be unreasonable to expect it to accommodate any unmet housing need for SDC because it faces similar constraints and challenges, is planning to meet its own need in full, and market and infrastructure capacity mean any such external need could not be accommodated. In the circumstances, these could have all been valid issues for discussion and engagement between both authorities, but there is no evidence to indicate that they were actually the subject of any constructive engagement between the authorities.
33. The Council advise that once the actual SDC unmet need is examined and established, they would potentially seek to deal with it through a future review of the Plan. However, such an approach is not in the spirit of the Act or of national policy. The identified need for housing exists now, and the likely existence of unmet need has been known about for some time and is therefore a strategic matter that should have been considered through the DtC in the current round of local plans, not delayed to some future date. Deferring the issue to subsequent plans does not amount to constructive, active engagement, especially when the plan making processes were, in reality, closely aligned.
34. Memorandums of Understanding (MoU) were signed after the submission of both plans and provide no evidence of constructive and active engagement prior to the submission of the Plan and are therefore of no help in demonstrating the DtC has been met. Indeed, the short final MoU simply states, *'TMBC's evidence of meeting the Duty is set out in the Duty to Cooperate Statement (January 2019). The strategic cross-boundary matters and how the Duty was addressed are summarised in section 8 of the DtC Statement. The details are set out in sections 9 to 16. The record of engagement is documented in Appendix A'*. As set out above, the Statement provides no reference to the unmet housing need in SDC. Appendix A is a list of meetings that took place between April 2012 and January 2019 with various organisations, but no minutes have been provided from any of these meetings to show that unmet housing need in SDC was discussed, and moreover from careful consideration of the verbal evidence given by the Council at the hearing sessions, it would seem that it was not discussed at any of the meetings. The only discussion was about the constraints all of the Council's in the HMA were facing in meeting their housing need. Simply discussing constraints does not in itself amount to cooperation.
35. This shortcoming is surprising given that the Council were involved in the pilot scheme (West Kent Statement of Common Ground Pilot Project) with PAS looking at the use of Statements of Common Ground in plan making. Indeed,

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<sup>11</sup> Paragraph 13.19 of Tonbridge & Malling Borough Council Position Statement (ED58)

as part of this project, the Council, SDC, and Tunbridge Wells Borough Council all agreed in April 2018 that the need to address the matter of unmet housing need was the most significant issue to be addressed in any Statement of Common Ground<sup>12</sup>. This also shows that by April 2018 the Council and SDC had acknowledged that it remained unlikely SDC would be able to meet its housing need in full<sup>13</sup> and despite this, there is no evidence of cross boundary working with SDC and others as a way of seeking to ensure that housing needs were met in full across the HMA. Moreover, the NPPF at paragraph 181 provides advice to LPAs on how to demonstrate evidence of effective cooperation in relation to cross-boundary impacts. This suggests the use of, among other things, memorandums of understanding. It adds that 'cooperation should be a continuous process of engagement from initial thinking through to implementation...'. There is no evidence that this approach was followed.

36. Despite knowing that, as early as 2017, SDC was indicating it would be likely to have unmet housing need, it is reasonable for us to conclude on the basis of everything that we have considered that the Council failed to engage constructively, actively and on an ongoing basis with SDC on that strategic matter. An active process of ongoing, active and constructive engagement might or might not have led to a more positive outcome despite the constraints of market capacity, infrastructure capacity, Green Belt and AONB designations. However, what is certain is that, if parties choose not to engage with each other, there will be little prospect of difficult but important cross-border issues being resolved in relevant strategic matters. If there is no cooperation on such matters, then the effectiveness of plan preparation is unlikely to be maximised.

**If a plan is found to have failed the DtC, is it possible to proceed with the Examination?**

37. In a letter to the Planning Inspectorate, dated 18 June 2019, the Secretary of State stressed to Inspectors the importance of being pragmatic in getting a plan in place that, in line with paragraph 35 of the 2019 NPPF, represents a sound plan for the authority.
38. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This 2015 letter also stresses the importance of Inspectors working in a pragmatic way with councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within 5 years of adoption, giving councils the option to undertake

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<sup>12</sup> Sevenoaks District Council v Secretary of State for Housing Communities and Local Government [2020] EWHC 3054 (Admin)

<sup>13</sup> ED69A, Appendix D, paragraph 6.3

further work to address shortcomings identified at examination and highlighting significant issues to councils very early on and giving councils the full opportunity to address issues. However, the failure we have identified cannot be remedied during the examination since any failure in DtC cannot be resolved after submission of the Plan because the duty relates to the period of plan preparation which has ended. Once we had considered all of the evidence pertaining to DtC presented in writing and orally at the hearing sessions we immediately notified the Council of our concerns and cancelled the future hearings. We gave the Council opportunities, prior to the hearing sessions, during the hearing sessions and afterwards, to provide additional evidence confirming its approach to complying with the DtC undertaken prior to the submission of the Plan for examination.

39. In examining the Plan we have had this advice in the forefront of our minds and we have worked in a pragmatic way with the Council towards achieving a sound plan as far as practicable. However, we have identified a failure of legal compliance in relation to the DtC.
40. It is reasonable for us to conclude that the DtC, as set out in section 33A of the Act, has not been met.

## **Overall Conclusion and Recommendation**

41. The DtC in Section 33A of the 2004 Act has not been met for the reasons set out above and we, therefore, recommend that the Plan is not adopted.

*Louise Crosby and Luke Fleming*

Inspectors



The Planning Inspectorate

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# **Report to Sevenoaks District Council**

**by Karen L Baker DipTP MA DipMP MRTPI**

**an Inspector appointed by the Secretary of State**

**Date 2 March 2020**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the Sevenoaks District Local Plan**

The Plan was submitted for Examination on 30 April 2019.

The Examination Hearings were held between 24 and 26 September 2019 and between 1 and 3 October 2019.

File Ref: PINS/G2245/429/7

## **Abbreviations used in this Report**

DtC	Duty to Co-operate
HMA	Housing Market Area
HPS	Hearing Position Statement
IPe	Intelligent Plans and Examinations
the Plan	Sevenoaks District Local Plan
MHCLG	Ministry of Housing, Communities and Local Government
MM	Main Modification
NPPF	National Planning Policy Framework
OAN	Objectively Assessed Need
PAS	Planning Advisory Service
PPG	Planning Practice Guidance
SoCG	Statement of Common Ground
SHMA	Strategic Housing Market Assessment

## **Non-Technical Summary**

This Report concludes that the Sevenoaks District Local Plan (the Plan) is not legally compliant in respect of the Duty to Co-operate (DtC) and, as such, I recommend that the Plan is not adopted.

## Introduction

1. This Report contains my assessment of the Sevenoaks District Local Plan (the Plan) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). The National Planning Policy Framework (NPPF) 2019 makes it clear in paragraph 35 that local plans are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. It goes on to say that in order to be sound, a local plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the Examination is the assumption that the local planning authority has submitted what it considers to be a legally compliant and sound plan. The Sevenoaks District Local Plan Proposed Submission Version<sup>1</sup>, dated December 2018 and submitted on 30 April 2019, is the basis for my Examination. It is the same document as was published for consultation between 18 December 2018 and 3 February 2019.
3. This Report considers whether the Local Plan's preparation has complied with the Duty to Co-operate (DtC). Given my conclusions in respect of the DtC, I do not go on to consider whether the Plan is sound and whether it is compliant with the other legal requirements. If a local planning authority cannot demonstrate that it has complied with the Duty at the independent Examination of their Local Plan, then Section 20(7A) of the Act requires that the Examiner must recommend non-adoption of the local plan. This is the situation in this case, and it is not, therefore, necessary for me to consider the other matters further in this Report.
4. Hearing sessions were held between 24 and 26 September 2019 and between 1 and 3 October 2019. These focussed on legal compliance matters, including the DtC, and matters of soundness in relation to the Local Plan Strategy, Green Belt, Housing Need, Housing Requirement, Housing Distribution and Housing Supply, along with the Sustainability Appraisal.
5. Further Hearing sessions were planned as part of this Examination between 5 and 7 November 2019 and between 12 and 14 November 2019 to consider other soundness matters including: individual housing allocations; Gypsy and Traveller provision and allocations; employment need, requirement, distribution and supply; individual employment allocations; transport and infrastructure; the historic environment; open space, recreation and community facilities; the natural environment and biodiversity; climate change, flooding and water management; and, health, well-being and air quality. However, following my consideration of the evidence presented by the Council and other participants in response to my Matters, Issues and Questions<sup>2</sup> at the Hearing sessions during the first two weeks, and taking into account the written representations and discussion at those Hearing sessions, I had significant concerns in respect of legal compliance, namely the DtC, and soundness.

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<sup>1</sup> SDC001

<sup>2</sup> ED8

6. Following the first two weeks of Hearing sessions, I notified the Council in my letter<sup>3</sup>, dated 14 October 2019, that I had significant concerns about a number of aspects of the Plan, both in terms of legal compliance and soundness. This letter also stated that, given these concerns, I had asked the Programme Officer to cancel the further Hearing sessions planned for November and that I was preparing a letter setting out my thoughts in more detail which would be with the Council shortly afterwards. It also confirmed that I would not reach any final conclusions on the way forward for the Examination until I had had the opportunity to consider the Council's response to that letter.
7. Although I had concerns regarding soundness, these were issues which I would have needed to explore further, it is the failure to comply with the legal DtC which necessitated a halt to the Examination proceedings. Any failure in the DtC cannot be rectified once the Plan has been submitted for Examination because the DtC applies specifically to Plan preparation, and Plan preparation ends when the Plan is submitted for Examination.
8. My letter<sup>4</sup> to the Council, dated 28 October 2019, set out my concerns with regards to the DtC in some detail. The Council submitted responses<sup>5</sup> to this and to my earlier letter, along with a number of appendices. I replied<sup>6</sup> on 19 November 2019 to say that I would be responding after the pre-Election period, in line with the Planning Inspectorate's published position in this regard.
9. Having fully considered the Council's responses and appendices, my final letter<sup>7</sup> to the Council, dated 13 December 2019, set out my conclusions on this matter and stated that, unless the Council confirmed that it intended to withdraw the Plan from Examination, the only course of action open to me would be to prepare a Report concluding that the Plan is not legally compliant in respect of the DtC and recommending that it should not be adopted. In its letter<sup>8</sup>, dated 3 January 2020, the Council confirmed that it would not be withdrawing the Plan from Examination and asked that I issue my Report as soon as possible.

### **Main Modifications**

10. I have found a failure in respect of the DtC and, as such, I have no option but to recommend that the Plan should not be adopted. Accordingly, I have not concluded on any other matters in connection with the Plan and, as a result, I would not be able to recommend any Main Modifications [MMs].

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<sup>3</sup> ED37

<sup>4</sup> ED40

<sup>5</sup> ED38, ED38A, ED41, ED42, ED42A, ED42B and ED42C

<sup>6</sup> ED43

<sup>7</sup> ED44

<sup>8</sup> ED45

## Assessment of Duty to Co-operate

### ***Has the Council demonstrated that it has engaged constructively, actively and on an on-going basis in the preparation of the Local Plan?***

11. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by Section 33A in respect of the Plan's preparation.
12. Section 33A requires that a local planning authority co-operates with other local planning authorities, the County Council and prescribed bodies or other persons in relation to the preparation of the Plan. This duty requires the Council to engage constructively, actively and on an on-going basis in the preparation of the Plan, so far as it relates to a strategic matter. A strategic matter includes the sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas.
13. Government policy, set out in paragraph 26 of the NPPF, says that effective and ongoing joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. It goes on to say that, in particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere. Co-operation is, therefore, about maximising the effectiveness of plan preparation.
14. The Plan, as submitted, identifies a need for 13,960 dwellings between 2015 and 2035, but sets out a requirement for 10,568 dwellings, which would amount to an unmet need of 3,392 dwellings. The Council advanced a position<sup>9</sup> during the Examination which sought to reduce the unmet need. However, it would still have left an unmet need of 1,316 dwellings, even if I had agreed with the Council's position.
15. It is common ground between the Council and most parties to the Examination that housing is a strategic matter upon which the Council should engage constructively, actively and on an on-going basis with its neighbours. I concur with this view. The Council published a DtC Statement<sup>10</sup> in May 2019, following the submission of the Plan for Examination, which sets out the activities undertaken by the Council, including meetings with neighbouring authorities, at both Officer and Member level, and the production of a joint evidence base with neighbouring authorities in the West Kent Housing Market Area<sup>11</sup> [HMA].

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<sup>9</sup> Housing Supply Update Paper – C2 Update [ED23]

<sup>10</sup> SUP006 and SUP006a-d

<sup>11</sup> The West Kent Housing Market Area includes Sevenoaks District Council, Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council.

16. Whether the DtC has been complied with is a matter of judgement for the examining Inspector following consideration of the evidence presented by the Council and other participants, both in writing and at the Hearing sessions.
17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment<sup>12</sup> (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area<sup>13</sup> (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.
18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement<sup>14</sup> and Appendices<sup>15</sup> and in Appendix 1: Schedule A<sup>16</sup> attached to its letter<sup>17</sup>, dated 18 November 2019, with the minutes of most of these meetings<sup>18</sup> provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group<sup>19</sup> and the West Kent Statement of Common Ground (SoCG) Pilot Programme group<sup>20</sup>.
19. The minutes<sup>21</sup> of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues

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<sup>12</sup> Sevenoaks and Tunbridge Wells Strategic Housing Market Assessment, prepared by GL Hearn Limited, September 2015 [HOU001]

<sup>13</sup> The West Kent HMA includes Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council

<sup>14</sup> SUP006

<sup>15</sup> SUP006a, SUP006b, SUP006c and SUP006d

<sup>16</sup> ED42A

<sup>17</sup> ED42

<sup>18</sup> No minutes have been provided of the meetings held on 6 December 2017, 22 January 2018 and 14 March 2018, although summaries of the meetings on 22 January 2018 and 14 March 2018 are provided in the West Kent Statement of Common Ground (SoCG) Pilot Project Facilitator's Note, dated 3 April 2018 (updated by the amended version of this note dated 10 April 2018 and submitted by the Council as part of its Appendix 3: Duty to Co-operate Appendices [ED42C]).

<sup>19</sup> This group is made up of the three West Kent Housing Market Area (HMA) authorities, namely Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council.

<sup>20</sup> This group, facilitated by the Planning Advisory Service (PAS), also included the West Kent HMA authorities.

<sup>21</sup> Pages 172-174 of SUP006a

and Options (Regulation 18), do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary<sup>22</sup> of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPe), held on 22 January 2018, set out in the Facilitator's Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

20. The notes<sup>23</sup> of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks 'is testing options to assess the way forward'. The summary<sup>24</sup> of the meeting, held on 14 March 2018, set out in the Facilitator's Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated. The Facilitator's Note<sup>25</sup> does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say<sup>26</sup> that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.
21. The Council has since stated, in Appendix 1: Schedule A<sup>27</sup> to its letter<sup>28</sup>, dated 18 November 2019, that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect, as it referred to Sevenoaks District Council planning to meet its OAN in full. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note<sup>29</sup>, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are

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<sup>22</sup> Page 185 of SUP006a

<sup>23</sup> Pages 182-183 of SUP006a

<sup>24</sup> Page 185 of SUP006a

<sup>25</sup> Paragraphs 5.1 and 5.2

<sup>26</sup> Paragraph 6.1

<sup>27</sup> ED42A

<sup>28</sup> ED42

<sup>29</sup> West Kent SoCG Pilot Project Facilitator's Note, dated 10 April 2018, set out in 2a of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that 'the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue'. Paragraph 6.6 concludes that, 'each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need. Thus, the Councils are not yet in a position to reach agreement on the matter of housing supply'. As such, it is apparent that, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.
23. The minutes<sup>30</sup> of the West Kent DtC meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the DtC meetings refer to addressing the unmet need in Sevenoaks is at the DtC meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted<sup>31</sup> that 'officers discussed the potential requirement for a follow up letter<sup>32</sup> to request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.
24. Although the DtC statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.
25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have

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<sup>30</sup> Pages 191-192 of SUP006a

<sup>31</sup> Page 194 of SUP006a

<sup>32</sup> Letters were sent to neighbouring authorities requesting that they assist with Sevenoaks' unmet housing need in April 2019.

not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>33</sup> within the HMA.

26. In paragraph 13.2 of its HPS, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers 'did not receive any formal requests to address unmet housing need' from Sevenoaks District Council.
27. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.
28. In paragraph 1.04 of its HPS, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.
29. I appreciate that these neighbouring authorities say<sup>34</sup> that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does

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<sup>33</sup> Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council

<sup>34</sup> Letters dated 21 and 27 November 2019 set out in 3a and 3b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.

*Statements of Common Ground*

30. In order to demonstrate effective and ongoing joint working, paragraph 27 of the NPPF says that strategic policy-making authorities should prepare and maintain one or more Statements of Common Ground (SoCGs), documenting the cross-boundary matters being addressed and progress in co-operating to address these. These should be produced using the approach set out in national planning guidance and be made publicly available throughout the plan-making process to provide transparency.
31. The Council has submitted a number of SoCGs<sup>35</sup> as supporting documents, some of which were provided following the submission of the Plan for Examination, on 30 April 2019. These include several SoCGs with neighbouring authorities, including Tunbridge Wells Borough Council<sup>36</sup> and Tonbridge and Malling Borough Council<sup>37</sup>, which were signed on 21 and 30 May 2019 respectively. The agreed actions within these documents in respect of housing are to 'engage through the wider DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London's growth, large scale developments and opportunities for meeting any unmet need' and to 'undertake a 5 year review of the Local Plan'; and, 'to engage through the wider DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to strategic housing matters' respectively.
32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email<sup>38</sup> to MHCLG, dated 15 March 2019, the Council says that it 'is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.' However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They imply that these matters will be dealt with in any review of the Plan. However, the Duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination.
33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.
34. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents engagement in relation to a solution in the future, not the submitted Plan. At the DtC Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders'

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<sup>35</sup> SUP007a – SUP007i

<sup>36</sup> SUP007h

<sup>37</sup> ED6

<sup>38</sup> Email from James Gleave, dated 15 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan.

*The timing of engagement*

35. The Council refers to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. The Council says, in its letter<sup>39</sup> dated 18 November 2019, that it 'could have gone back to neighbours at this point', but decided not to, as it was felt that, as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated, 'it was therefore extremely unlikely that a higher unmet need would be met elsewhere'. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.
36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that 'all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other' at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that 'at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.' However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.
37. The full extent of unmet need only became apparent to the Council following the consideration of the responses to the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs. This would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage. However, there is no evidence to show that this occurred. Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have

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<sup>39</sup> ED42

been able to accommodate some of Sevenoaks' unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.
39. It is noted that neighbouring authorities have not indicated any willingness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks' housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need.

#### *Peer Review*

40. The peer review process undertaken by the Council consisted of advice<sup>40</sup> from Intelligent Plans and Examinations (IPE) in November 2018; a PINS' Advisory Visit<sup>41</sup> in February 2019; MHCLG advice<sup>42</sup>; and, a review of the Plan and PAS Workshop<sup>43</sup> on 24 April 2019.
41. The advice from IPE following its meeting with the Council on 1 November 2018, considered several matters, including housing need and delivery, however, it made no mention of the extent of unmet housing need in the District, or how this could be addressed. The purpose of the PAS Workshop, which was held six days before the Plan was submitted for Examination and led by IPE, was 'to provide advice on the implications of the DtC for the soundness assessment of the Plan' and 'to meet with neighbouring authorities,

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<sup>40</sup> Revised Note in respect of the preparation of the Sevenoaks Local Plan, prepared by Laura Graham of IPE, dated 4 December 2018, set out in 1a of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>41</sup> PINS Advisory Visit Note, prepared by Inspector Jonathan Bore, dated 6 February 2019, set out in 1b of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>42</sup> MHCLG correspondence, meeting 6 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>43</sup> Note on the Duty to Co-operate and the Local Plan, prepared by IPE, dated 7 May 2019, set out in 1d of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

so they could outline their respective positions regarding meeting development needs in West Kent.'

42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings<sup>44</sup> in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan<sup>45</sup>, prepared by IPe, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement<sup>46</sup>. This note concludes that 'none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working'.
43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, the PAS Workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.
44. The Council says that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, several points were raised in relation to the DtC at the Advisory Visit<sup>47</sup> carried out by the Planning Inspectorate in February 2019, as set out in the note<sup>48</sup> of this meeting.
45. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet need and that it could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

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<sup>44</sup> This revised figure took account of proposed changes to the Plan period being put forward by the Council for consideration during the Examination.

<sup>45</sup> ED42B

<sup>46</sup> SUP006, SUP006a, SUP006b, SUP006c and SUP006d

<sup>47</sup> The Planning Inspectorate carries out Advisory Visits to local planning authorities ahead of submission to provide advice on procedures and to help them achieve a sound plan.

<sup>48</sup> The PINS Advisory Visit Meeting Note is set out in 1b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C].

46. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS Workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the DtC Statement was not submitted until May 2019. Nor would it have had the benefit of the time available to an Inspector for the examination of that detailed and complex evidence or the discussion at the Hearing sessions.
47. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement<sup>49</sup> in May 2019, in which it states that 'KH<sup>50</sup> advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPe<sup>51</sup>, submitted in November 2019, does not state that the DtC has been met or that KH advised that this was the case.
48. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective.

*If a Plan is found to have failed the Duty to Co-operate, is it possible to proceed with the Examination?*

49. The Secretary of State wrote to the Planning Inspectorate, on 18 June 2019, in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority.
50. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also stresses the importance of Inspectors working in a pragmatic way with Councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.
51. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to

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<sup>49</sup> SUP006d

<sup>50</sup> KH was Keith Holland of IPe, working on behalf of PAS.

<sup>51</sup> ED42B

proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.
53. For the reasons set out above the DtC set out in Section 33A has not been complied with.

## **Overall Conclusion and Recommendation**

54. The DtC in Section 33A of the 2004 Act has not been complied with for the reasons set out above and I, therefore, recommend that the Local Plan is not adopted.

*Karen L Baker*

Inspector



Neutral Citation Number: [2020] EWHC 3054 (Admin)

Case No: CO/1417/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13/11/2020

**Before :**

**MR JUSTICE DOVE**

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**Between :**

**Sevenoaks District Court**  
**- and -**  
**Secretary of State for Housing Communities and**  
**Local Government**

**Claimant**

**Defendant**

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**Ms Saira Kabir Sheikh QC and Charles Merrett (instructed by Sharpe Pritchard) for the**  
**Claimant**  
**Richard Moules (instructed by GLD) for the Defendant**

Hearing dates: Thursday 3rd September 2020  
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**Approved Judgment**

## **Mr Justice Dove :**

### Introduction

1. The claimant is a local planning authority who prepared the Sevenoaks District Local Plan (“the SDLP”) for its administrative area. The claimant challenges the decision of the Inspector appointed by the defendant to undertake the examination of the SDLP who concluded that the claimant had failed to comply with the duty to cooperate set out in section 33A of the Planning and Compulsory Purchase Act 2004. The claim is advanced by the claimant on four grounds. The first ground is that the Inspector erred in law in failing to apply a margin of appreciation when considering the test under section 33A of the 2004 Act. Ground 2 is the contention that the Inspector failed to correctly interpret and apply the duty to cooperate, and in reality conflated that duty with the requirement that a plan be sound. Ground 3 is that the Inspector failed to have regard to material considerations and in particular to consider the material evidence that was placed before her. Finally, Ground 4 is a challenge based on the contention that the Inspector’s reasons were inadequate.
2. This judgment will firstly set out the facts in relation to the case, secondly, rehearse the relevant legal framework and, thirdly, deal with the submissions advanced and the conclusions reached in relation to the four grounds on which this application is advanced.

### The facts

3. The claimant’s administrative area contains a significant element of Green Belt as well as areas which are designated as an Area of Outstanding Natural Beauty. Its district forms part of the West Kent Housing Market Area (the “HMA”) and has further functional and economic relationships with London boroughs to the north of its administrative area.
4. The claimant began the preparation of its proposed SDLP in 2015 and at that time the evidence for it started to be collected. In September 2015 a Joint Strategic Housing Market Assessment (“SHMA”) was published, having been prepared jointly for the HMA by the claimant together with the other local planning authorities in the HMA: Tunbridge Wells and Tonbridge and Malling Borough Councils. Other technical work in relation to the assessment of the Green Belt and provision for gypsies and travellers was prepared by the claimant. The claimant undertook two rounds of consultation under the provisions of Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012, the first in relation to issues and options in August 2017, and then a further consultation on the draft SDLP from July through to September 2018. In a witness statement before the court to explain the factual background to the preparation of the SDLP, James Gleave, who is the Strategic Planning Manager for the claimant, explains that at the Regulation 18 stage of plan preparation the extent of any unmet housing need as a result of the SDLP’s proposals was unknown “because views were still being gathered on what the Plan ought to contain and the council’s ‘call for sites’ process remained open until October 2018”. Thus, Mr Gleave observes, that it was not clear what proportion of unmet housing need might arise in the claimant’s district.

5. Between 8 December 2018 and 3 February 2019 the claimant undertook the consultation required by Regulation 19 of the 2012 Regulations on the SDLP in its proposed submission version. The proposed submission version identified that based upon the defendant's standard methodology the annualised housing need for the claimant's district was 698 dwellings, giving rise to a total of 13,960 dwellings over the 20-year plan period from 2015 to 2035. The housing land supply which was proposed in the SDLP was 10,568 dwellings or approximately 75% of the total housing need derived pursuant to the standard methodology. The plan was submitted for examination on the 30 April 2019.
6. For the purposes of the examination the claimant prepared a Duty to Cooperate Statement ("the Statement") setting out its case and the evidence in support of the conclusion that the duty to cooperate had been satisfied in the preparation of the SDLP. The Statement presents the evidence in a number of themes. Firstly, it alludes to the preparation of a joint evidence base, referring to the SHMA set out above and other studies and plans which were jointly prepared with relevant authorities. Secondly, the Statement refers to discussions which had occurred with a wide variety of statutory bodies ranging from Natural England and the Environment Agency to Highways England and Network Rail. The Statement then turns to discussions with neighbouring authorities. Reference is made to the Kent Planning Officer's Group as a forum (complemented by the Kent Planning Policy Forum) which meet regularly to discuss common issues in relation to plan making and allied concerns. Annexed to the statement are the notes of meetings with other public bodies, and in particular neighbouring authorities, which had occurred since the outset of preparation of the SDLP in 2015. The statement then records the statements of common ground which had been signed with a wide variety of local authorities and public bodies in respect of the various cross-boundary strategic issues which were engaged with the SDLP process. Alongside this documentation the Statement also set out discussions which had taken place at an elected member level with adjoining local authorities and briefings which had occurred with local MPs. Finally, the Statement also sets out the elements of peer review to which the SDLP process had been subject since the Regulation 18 draft consultation.
7. Whilst it is clear that the duty to cooperate, so far as it was relevant to the SDLP process, engaged a number of strategic issues, for the purposes of this judgment it is necessary to focus upon the strategic issue of housing need since, as will be seen, that was the issue which was principally of concern to the Inspector. In that connection it is necessary to set out the contents of the statements of common ground with, in particular, the neighbouring authorities of Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council, along with the conclusions of the peer review which was undertaken and relied upon in relation to the housing issue.
8. A statement of common ground was agreed between the claimant and Tonbridge Wells Borough Council on the 21 May 2019. Having set out the issue in relation to unmet housing need within the SDLP the statement of common ground records as follows:
  - “2.1.5 Discussions have taken place with neighbouring authorities in the HMA to discuss assistance with any unmet need, but no authority has been in a position to assist SDC with its unmet need.

2.1.6 TWBC is currently preparing its second Regulation 18 version of the Draft Local Plan for consultation, which includes the vision, objectives and growth strategy, overarching strategic policies, place shaping policies and detailed Development Management Policies.

2.1.7 TWBC is also constrained by the Green Belt (22%) and the Area of Outstanding Natural Beauty (70%) as well as areas of flood risk and traffic congestion. The Regulation 18 Draft Local Plan identifies the need for 13,560 dwellings in accordance with the Standard Methodology. Taking into account homes already built since 2013 and sites benefiting from planning permission and allocations within the existing Site Allocations Local Plan, TWBC is aiming to allocate land to meet the remaining balance of 8,914 (Note: this is still subject to change following ongoing work) dwellings. TWBC is seeking to meet its full objectively assessed need across the borough through development at a number of settlements, strategic release of Green Belt at Paddock Wood/Capel to allow expansion of the settlement and a new garden settlement within the Green Belt at Tudeley also within Capel Parish.

2.1.8 It is understood that, at present, TWBC is unable to assist SDC with unmet housing need, due to the constraints on both local authorities, and their inability to meet housing needs beyond their own, irrespective of unmet needs elsewhere.

2.1.9 Consequently, both councils will continue to work together and identify the position as both TWBC and SDC prepare to review their Local Plan every 5 years.

#### Actions

TWBC and SDC will engage through the wider Duty to Cooperate forum with other neighbouring authorities outside the West Kent housing market area in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London growth, large scale developments and opportunities for meeting any unmet need.

TWBC and SDC to each undertake a 5 year review of their respective Local Plans.”

9. The position in the statement of common ground is supported by the material contained within Tunbridge Wells Borough Council’s Hearing Position Statement for the purposes of the examination. The Hearing Position Statement observes that up until 11 April 2019 there had been discussions in relation to matters, including the meeting of housing need, and that those discussions were reflected in the observations made by Tunbridge Wells Borough Council during the Regulation 19 consultation, where they stated that there should be no presumption that there was any capacity within the Tunbridge Wells Borough Council area to accommodate unmet need from another

authority area. The Hearing Position Statement records that on the 11 April 2019 Tunbridge Wells Borough Council received a communication from the claimant formally asking whether or not they were in a position to meet any of the claimant's unmet housing need. At the duty to cooperate workshop on the 24 April 2019 (which is addressed further below) Tunbridge Wells Borough Council made clear that they would not be able to meet any of the claimant's unmet housing need. The Hearing Position Statement does however record as follows:

“1.06 It is considered pertinent to note that if the request from SDC to meet its unmet need had been made at any point prior to the submission of TWBC's comments on Sevenoaks regulation 19 representations then those representations would have addressed this issue more fully.”

The Hearing Position Statement goes on to record the observations made within the Statement of Common Ground and set out above and to indicate that the position from their perspective remained the same.

10. Tonbridge and Malling Borough Council also provided a hearing statement for the purposes of the examination. In their hearing statement they explain that during the consultations on both the Regulation 18 and Regulation 19 versions of their own Local Plan they had not received any request from the claimant to address unmet housing need. In the hearing statement they set out that there had been regular meetings between Tonbridge and Malling Borough Council and the claimant to address cross-boundaries strategic matters engaging the duty to cooperate. The essence of the position which they placed before the Inspector is set out in the following paragraphs of their hearing statement:

“13.5. It is evident that TMCB faces similar constraints and challenges to Sevenoaks District Council for that part of the Borough covered by the West Kent HMA. However, TMBC's response during plan-making has and continues to be significantly different to that of Sevenoaks District Council.

13.6. TMCB has responded positively to the Government's policy for plan-making by addressing in full its assessed need for housing plus some flexibility to adapt to rapid change. This is summarised in the TMBC Spatial Topic Paper. This has been challenging but TMBC understands that if suitable patterns of development are to be delivered and if the Local Plan is to positively address the acute need for housing, as demonstrated by the median housing affordability ratio, then sufficient sites need to be allocated for development to ensure there is no unmet need. This includes the removal of approximately 160 hectares of land from the Green Belt in the West Kent HMA to provide for residential development, as explained in the TMBC Green Belt Exceptional Circumstance Topic Paper.

13.7 Before addressing the matter of whether or not the unmet housing need could be accommodated in Tonbridge & Malling Borough it is important to first question whether it is reasonable

for Sevenoaks District Council to expect TMBC to address it. Given the similarities between the two authorities (see above), TMBC considers that it is entirely inappropriate to ask the Borough Council to accommodate unmet housing need in an area with the same constraints that have been dismissed by Sevenoaks District Council. It is important to bear in mind that the part of Tonbridge & Malling Borough falling within the West Kent HMA is wholly within the Green Belt (with the exception of the settlements not washed over by the designation).

13.8 If Sevenoaks District Council had adopted a similar positive approach to meeting the housing development needs of their area in full, it is possible that there would be significantly less or no unmet need to consider. It is unreasonable to expect TMBC to not only meet their assessed need for housing in full but to accommodate unmet housing need from Sevenoaks District Council who are facing similar constraints.

...

13.19 To conclude, it would be unreasonable to expect Tonbridge & Malling Borough Council to accommodate unmet housing need from Sevenoaks District Council given that TMBC is facing very similar constraints and challenges and is planning to address in full its own assessed housing need. Not only would it be unreasonable but factors including Housing Market Areas, market capacity and infrastructure mean that TMBC could not accommodate the identified unmet housing need.”

11. In addition to the contributions made by the local authorities directly concerned in the duty to cooperate, representations were also made, in particular to the examination process, by other parties who were interested in the issue. Representations were made both for and against the conclusion that the duty to cooperate had been satisfied in the present case. Whilst some reliance was placed upon this material by both parties at the hearing of this case, it suffices to record that there were a number of participants in the examination who maintained that the claimant had not complied with the duty to cooperate and that this was a fundamental flaw in the preparation of the SDLP.
12. As set out above the claimant placed reliance in support of its contention that the duty to cooperate had been satisfied upon the peer review of the plan process which had been commissioned as a cross-check in relation to the process. The first element of this work was the invitation extended by the Planning Advisory Service (“PAS”) to the claimant to participate in a pilot project in relation to the preparation of statements of common ground. This invitation was extended to and accepted by both the claimant and also Tonbridge Wells Borough Council and Tonbridge and Malling Borough Council. The programme led to a sequence of meetings, culminating in the preparation of notes reflecting the outcome of the project, dated the 3 April 2018. Paragraph 5.2 of the note of the discussions indicates that the need to address the matter of unmet housing need was acknowledged on all sides as the most significant issue that needed to be addressed in any statement of common ground between the parties. The note then considers the question of housing need in the three districts in the HMA, and from paragraph 6.1

onwards sets out the position in each of the authorities, and thereafter at paragraphs 8.4-8.5 notes the risks in the current position. The note provides as follows:

“6.1 Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017. In Sevenoaks the OAN of 11,740 (578 dpa) compares with an indicative figure of 13,960 (698 dpa) based on the government’s standardised methodology. In Tunbridge Wells the SHMA gives an OAN of 696dpa, which is consistent with the government’s indicative figure of 692 dpa using the proposed standard methodology.

6.2 The situation in Tonbridge and Malling is more complex. The evidence base, which includes an up to date SHMA covering 2 housing market areas, gives an OAN of 696 dpa. This is significantly lower than the indicative figure of 859 dpa using the proposed standardised methodology. Members have agreed to continue with 696 dpa figure. The Council accepts the standardised methodology and will reflect this as national policy in its Local Plan. However it proposes to demonstrate that the higher figure is undeliverable based on past trends and capacity issues. This position will be supported by evidence including the housing deliverability study prepared by G L Hearn in September 2017. The Council’s concerns are clarified in more detail in its consultation response to Planning for the Right Homes in the Right Places.

6.3 The emerging Tonbridge and Malling Local Plan, if it continues to propose a housing supply which is lower than the standardised OAN, clearly presents a risk to finalising an agreed SoCG. Whilst at present neither Sevenoaks or Tunbridge Wells will require Tonbridge and Malling to accept unmet need, it is possible that the reverse may apply. Even if all three Councils sign up to a SoCG which includes a lower housing figure for Tonbridge and Malling than the standard methodology indicates, this could be undermined when its Local Plan is examined.

...

8.4 The greatest risk to this SoCG is the decision by Tonbridge and Malling to continue plan for a level of housing supply which is below the OAN identified by the government’s standard methodology. As Tonbridge and Malling takes its Local Plan forwards it will be relying on evidence which states that capacity and delivery issues prevent it from states that capacity and delivery issues prevent it from meeting the higher OAN.

8.5 Whilst both Sevenoaks and Tunbridge Wells are aiming to meet their standard methodology OANs, both are heavily

constrained by green belt and infrastructure issues and are unlikely to be capable of accommodating unmet need from Tonbridge and Malling. This pilot project is not the appropriate place to address this matter in detail. However if the final SoCG is to have any real meaning and to be robust in supporting the three Local Plans there will need to be some hard talking within the group on this matter. This is a potential showstopper in terms of the utility of the SoCG and its capability of serving its desired purpose”

13. At a later stage it emerged that the note of the 3 April 2018 (which the claimant had included within the appendixes to the statement) had in fact been superseded in a subsequent note dated 10 April 2018. It seems that the representative of Tonbridge and Malling Borough Council had, in response to receipt of the 3 April 2018 draft, made suggestions in relation to amendments to the draft, including the observation that the claimant would have elements of unmet housing need. Thus, paragraphs 6.1 and following of the note were redrafted as follows:

“6.1 During the short lifespan of this pilot project there have been several changes to both the policy background, for example the revised draft of the NPPF issued for consultation on 5 March 2018 and to the emerging evidence base which will support the three Local Plans. Consequently the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue. The current situation, at the end of the pilot project, is as follows.

#### Sevenoaks DC

6.2 In Sevenoaks the OAN of 12,400 compares with an indicative figure of 13,960 based on the government’s standardised methodology. With Regulation 19 submission planned to take place in early 2019 it likely to fall outside the NPPF transition period, therefore the higher figure will apply. However the district is highly constrained, with 93% of the district lying within the Green Belt and 60% within AONBs.

6.3 The Council is currently examining the potential of releasing some Green Belt land where a convincing exceptional circumstances case is made. This would mean that any proposed development would need to deliver evidenced social and community benefits as well as housing. Sites where this might be the case will be the subject of Regulation 18 consultation. This may increase the housing land supply but it remains unlikely that Sevenoaks DC Tonbridge and Malling DC will be able to meet its housing need in full.

#### Tonbridge and Malling BC

6.4 The evidence base for the Tonbridge and Malling Local Plan, which includes an up to date SHMA covering two housing

market areas, gives an OAN of 696 dpa. This is significantly lower than the indicative figure of 859 dpa using the proposed standardised methodology. However the position has changed since the pilot project began with the revised NPPF draft proposing a transitional period for introducing the standardised methodology of assessing housing need. Provided the Regulation 19 submission can be made within the transition period, as proposed by the Council, then the lower locally derived OAN can be used. This level of housing growth is considered deliverable.

#### Tunbridge Wells BC

6.5 When the pilot project commenced Tunbridge Wells BC was planning to meet its locally derived OAN as determined by the joint SHMA which was updated in 2017. The SHMA sets an OAN of 696 dpa for Tunbridge Wells, which is consistent with the government's indicative figure of 692 dpa using the proposed standard methodology. Recently updated evidence on strategic flood risk suggests that some re appraisal may be necessary, but the Council is still endeavouring to ensure that it can meet its own housing need.

#### Summary

6.6 Each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling BC is confident that it can meet its need, Sevenoaks DC and Tunbridge Wells BC have not yet completed the work needed to determine whether or not they can meet their housing need. Thus the Councils are not yet in a position to reach agreement on their housing needs. The councils are not yet in a position to reach agreement on the matter of housing supply.”

14. In autumn 2018 the claimant commissioned Intelligent Plans and Examinations (IPE) to undertake a review of the Regulation 18 draft of the SDLP, with a particular focus on the Green Belt and the question of exceptional circumstances. A meeting was held on 1 November 2018, and on the 4 December 2018 Ms Laura Graham, who had undertaken the review, produced a report of her advice. Within that advice she noted that there was “no absolute requirement in the NPPF to meet housing need”, but that if development needs could not be met outside the Green Belt it would be necessary to demonstrate through the sustainability appraisal process that the consequences of not meeting that need had been fully and properly addressed.
15. On the 17 December 2018 the claimant contacted the Planning Inspectorate (“PINS”) with a view to arranging an advisory visit in order to assess the plan which was at that stage in the midst of the Regulation 19 consultation (the Regulation 19 consultation closed on the 4 February 2019). On the 6 February 2019 the advisory visit from PINS was undertaken by an experienced Inspector, Mr Jonathan Bore. One of the important topics for discussion at that meeting was the change that the claimant was considering to altering the base date of the SDLP to 2019-35. The note of the advisory visit identifies

that the plan fell seriously short of meeting its housing need in full, based upon the standard method. In relation to the duty to cooperate the note of the meeting records as follows:

“The Duty to Cooperate

Sevenoaks haven’t sent formal letters asking other authorities to accommodate unmet need. They say they don’t want to, because no authorities are willing to help with unmet need and asking the question would sour relations with them. Some neighbouring authorities such as Tandridge may also have unmet need. There is a SoCG with other authorities and a MOU with Maidstone, but the Council did not say that there is constructive engagement among the neighbouring authorities to resolve the issue, nor could they point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated.”

16. The note goes on to record the comments on the issues made by Mr Bore at the meeting. In particular, within the comments on the issues he noted as follows:

“If the OAN really could not be accommodated within the District, I said that there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis. Currently, despite the MoU and SoCGs, this did not appear to exist in a positive form. I said that any Inspector would look closely at this in regard to whether the Duty to Cooperate had been fulfilled.”

17. The advisory visit by Mr Bore on behalf of PINS was followed by correspondence from the defendant seeking to understand how the visit had gone, and offering assistance from PAS in relation to guiding the future progress of the plan. This correspondence led to a meeting on the 6 March 2019 between Mr Gleave and a colleague from the claimant and representatives of the defendants. The notice of the meeting of the 6 March observes as follows:

“Sevenoaks asked whether MHCLG meets with LPAs on a regular basis following an Advisory Visit or whether there were particular concerns with the emerging Sevenoaks plan. MHCLG explained that following the AV the Department had been made aware that there were some potentially significant issues with housing numbers and Duty to Co-operate, and constraints including Green Belt. Given these could be potential ‘showstoppers’ MHCLG wanted to talk through the issues, find out what further work Sevenoaks may be doing in respect of these and to discuss whether there is any assistance MHCLG could provide as the authority prepares its plan for submission.

In terms of the Duty to Co-operate, Sevenoaks explained they had met regularly with neighbouring authorities at Officer and Member level to discuss x-boundary issues, of which housing

need was a standing item on the agenda. In addition, a regular Kent-Planning Officers Group was held at Kent County Council. This operates along similar lines to the ALBPO forum in London and serves to update colleagues on Local Plan preparation. Statements of Common Ground are currently being prepared with neighbours on strategic cross-boundary matters, including housing need.

...

DR advised that the balance between protecting the environment and meeting housing needs was a planning judgement that had to be made locally. SH set out that the approach the LPA took would need to be justified, both in terms of why the authority was unable to meet its own needs and the reasons behind neighbouring authorities not being asked to accommodate some of Sevenoaks needs.”

18. On the 11 April 2019 Mr Gleave, on behalf of the claimant, wrote to neighbouring planning authorities in relation to the progress that was being made in respect of the plan. They were also invited to an event which was being facilitated by PAS to be held later in the month. The correspondence contains the following in relation to the duty to cooperate:

“The Council is of the view that all authorities bordering Sevenoaks, and Kent County Council, have engaged actively and on an on-going basis to meet the provisions of the Duty to Co-operate. In particular, Statements of Common Ground (SoCGs) are in the process of being agreed to formally clarify if it is possible to meet unmet housing needs from adjoining areas. Notwithstanding the provisions of the SoCG and for the sake of completeness, I write to formally ask if is in a position to meet any of Sevenoaks’ unmet housing need as outlined above. In the event that this is not possible, I would also be grateful for your views on the preparation of a joint sub-regional strategy to address future housing requirements.”

19. The duty to cooperate workshop took place on the 14 April 2019 and a note was prepared minuting the meeting. An experienced former Inspector, Mr Keith Holland, facilitated the workshop. Updates were provided by the local planning authorities who attended and, in particular, the update from the claimant identified that the SDLP housing supply left a shortfall measured against the standard methodology requirement of approximately 1,900 dwellings across the plan period, equating to about 17%. The claimant provided a summary of the activities which they had undertaken in order to address the duty to cooperate. Following discussion of the issues a note records Mr Holland advising that in his view “SDC has done all it can and is able to demonstrate that it has satisfied the duty to cooperate requirement”. This note of the workshop then records further discussions in relation to the potential to a sub-regional strategy to address unmet housing needs across the area.

20. A note of these meetings held with PAS was also provided by IPe who undertook the work for PAS. Their note covers both the meeting which was held on the 17 April 2019 and a first meeting between Mr Gleave and his colleagues on behalf of the claimant and Mr Holland. The claimant's position as expressed in the SDLP was explained to Mr Holland in the meeting on the 17 April 2019 and noted as follows:

“2.2 The discussion focussed on the implications of the DtC for the soundness assessment of the SLP. At the time of the meeting, the Council's intention was to submit the SLP for examination at the end of the month (it was subsequently submitted on 30 April 2019). The discussion included a review of advice provided by Laura Graham of IPe and Jonathan Bore from the Planning Inspectorate (PINS). SDC feels that there is a degree of inconsistency between the PINS advice and that provided by IPe. SDC believe that the advice from PINS is based on a misunderstanding of the approach being adopted by the SDC. In the view of the SDC, PINS failed to fully appreciate that the council attempts unmet housing need as an exceptional circumstance justifying consideration of Green Belt (GB) land release. What PINS calls a “Council imposed impediment” (the provision of infrastructure for the existing community) is not the defining exceptional circumstance consideration – it is simply the logical requirement that any development in the GB needs to be accompanied by adequate infrastructure. In other words, SDC believes that PINS has placed too much emphasis on the infrastructure point and not enough on the unmet need consideration.”

21. The note prepared by IPe in relation to the workshop on the 14 of April 2019 provides as follows in relation to the views expressed in respect of the duty to cooperate:

“3.3 The message regarding the importance of the DtC and the way it is dealt with at local plan examinations was repeated. All parties present appreciate how important the local duty is and how it has the potential to derail examinations. Each of the councils present outlined the position they are in at present regarding their development plans. From the discussion, it is clear that none of the authorities present are in a position to help meet any unmet housing need generated by SDC. In fact, most of the authorities believe that they are unlikely to be able to meet their own needs. The discussion thus confirmed and reinforced the contention made in the Submission version of the SLP that the Council is unable to meet its own needs and cannot rely on the DtC to resolve the problem. The importance of preparing a clear and convincing narrative for the forthcoming SDC local plan examination was again stressed.

3.4 The importance of continuing to seek to meet development needs in West Kent through cooperative strategic working was discussed. In this regard, the need for a strategic approach to infrastructure was emphasised. KH explained the importance of

getting member involvement and buy-in to any strategic work and that the more formal the process, the more likely it was to convince a local plan examiner that the councils are doing all they can to use the DtC effectively. Cllr Piper expressed severe reservations about the likelihood of effective strategic planning because of what he described as an inconsistency between the political message provided by the government regarding the GB and the guidance in the NPPF. KH pointed out that under the DtC there is nothing to stop local authorities undertaking joint strategic planning of the sort that previously happened in the South East through SERPLAN (London and South East Regional Planning Conference). KH also explained that the policy in the NPPF makes it clear that where there are exceptional circumstances local authorities can revise GB boundaries, but that this must be done through their local plans and not through the development management process.”

22. On the 30 April 2019 the plan was submitted for examination. As set out above Statements of Common Ground with neighbouring authorities were produced as part of the examination process. The examination hearing sessions commenced on the 24 September 2019, and issues in relation to the duty to cooperate were canvassed on the first day of the hearing. On the 14 October 2019 correspondence was received by the claimant from the Inspector raising concerns that she had in relation to whether or not the claimant’s approach to the SDLP had met the requirements of the duty to cooperate. There then followed further correspondence between the claimant and the Inspector which it is unnecessary to rehearse in detail for the purposes of this judgment. Suffice to say, that during the course of that exchange of correspondence the claimant provided detailed responses and further documentation including, for instance, the corrected note of the 10 April 2018. By the 13 December 2019 the Inspector had confirmed her view that the claimant had not discharged the duty to cooperate and therefore indicated that unless the claimant intended to withdraw the plan from examination the only course available was for her to produce a report concluding that the plan was not legally compliant. On the 3 January 2020 the claimant requested that the Inspector issue her report as soon as possible. This led to the production of the Inspector’s final report issued to the claimant on the 2 March 2020 and comprising the decision which is the subject of this challenge.
23. The Inspector’s final conclusions in relation to the issues with respect to the duty to cooperate are set out in the decision which is under challenge. In order to provide the full context for the Inspector’s decision it is necessary to set out her conclusions at some length. At the outset of her decision the Inspector set out that the starting point for the examination was the assumption that the local authority had submitted what it considered to be a legally compliant and sound plan. She confirmed that this was the basis for her examination. She further set out by way of introduction that having reached conclusions in relation to the duty to cooperate she did not go on to consider whether the plan was sound or was compliant with other legal requirements. She points out that if the local planning authority cannot demonstrate that the duty to cooperate has been complied with then, under section 20(7A) of the 2004 Act, the examiner is bound to recommend non-adoption of the local plan. In her decision the Inspector addresses the evidence in relation to the duty to cooperate in the following paragraphs:

“17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.

18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement and Appendices and in Appendix 1: Schedule A attached to its letter, dated 18 November 2019, with the minutes of most of these meetings provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group and the West Kent Statement of Common Ground (SoCG) Pilot Programme group.

19. The minutes of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues and Options (Regulation 18), do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPE), held on 22 January 2018, set out in the Facilitator’s Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

20. The notes of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks ‘is testing options to assess the way forward’. The summary of the meeting, held on 14 March 2018, set out in the Facilitator’s Note, dated 3 April 2018, does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated.

The Facilitator's Note does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.

21. The Council has since stated, in Appendix 1: Schedule A to its letter, dated 18 November 2019, that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect, as it referred to Sevenoaks District Council planning to meet its OAN in full. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that 'the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue'. Paragraph 6.6 concludes that, 'each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need. Thus, the Councils are not yet in a position to reach agreement on the matter of housing supply'. As such, it is apparent that, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.

23. The minutes of the West Kent DtC meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the DtC meetings refer to addressing the unmet need in Sevenoaks is at the DtC meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted that 'officers discussed the potential requirement for a follow up letter to

request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.

24. Although the DtC statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.

25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>1</sup> within the HMA.

26. In paragraph 13.2 of its HPS, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers 'did not receive any formal requests to address unmet housing need' from Sevenoaks District Council.

27. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need

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following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.

28. In paragraph 1.04 of its HPS, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.

29. I appreciate that these neighbouring authorities say that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.”

24. The Inspector went on to address the statements of common ground which had been prepared in order to deal with cross-boundary issues. Her conclusion in relation to those statements of common ground is set out as follows:

“32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email to MHCLG, dated 15 March 2019, the Council says that it ‘is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.’ However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They imply that these matters will be dealt with in any review of the Plan. However, the Duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is submitted for Examination.

33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.

34. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents engagement in relation to a solution in the future, not the submitted Plan. At the DtC Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders' meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan."

25. The Inspector then proceeded to consider the question of the timing of the engagement in relation to, in particular, the extent of unmet housing need which was the strategic issue at the heart of her concerns in relation to the duty to cooperate. She sets out her conclusions in relation to this issue in the following paragraphs:

"35. The Council refers to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. The Council says, in its letter dated 18 November 2019, that it 'could have gone back to neighbours at this point', but decided not to, as it was felt that, as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated, 'it was therefore extremely unlikely that a higher unmet need would be met elsewhere'. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.

36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that 'all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other' at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that 'at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The

best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.’ However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.

37. The full extent of unmet need only became apparent to the Council following the consideration to the responses of the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs. This would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage. However, there is no evidence to show that this occurred. Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have been able to accommodate some of Sevenoaks’ unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.

39. It is noted that neighbouring authorities have not indicated any willingness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks’ housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been

significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need.”

26. The Inspector then proceeded to consider the peer review processes which had been undertaken by the claimant, in terms of external advice from IPE in November 2018, the PINS advisory visit in February 2019, the advice which had been received from the defendant and the review of the plan and the PAS workshop which had occurred on the 24 April 2019. Dwelling initially on the PAS workshop, and subsequently focusing on the other elements of peer review, the Inspector's conclusions are set out as follows:

“42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan, prepared by IPE, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement. This note concludes that ‘none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working’.

43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, the PAS Workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.

44. The Council says that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, significant concerns were raised in relation to the DtC at the Advisory Visit carried out by the Planning Inspectorate in February 2019, as set out in the note of this meeting.

44. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet

need and that it could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

45. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS Workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the DtC Statement was not submitted until May 2019. Nor would it have had the benefit of the time available to an Inspector for the examination of that detailed and complex evidence or the discussion at the Hearing sessions.

46. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement in which it states that 'KH advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPE, does not state that the DtC has been met or that KH advised that this was the case.

47. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective."

27. The final point addressed by the Inspector was whether it would be possible to proceed with the examination, applying the defendant's indication in correspondence with PINS that Inspectors should be pragmatic in getting plans into place. Her conclusions in relation to this point, and indeed the position overall, are set out in the following paragraphs of her decision.

"49. The Secretary of State wrote to the Planning Inspectorate, on 18 June 2019, in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the NPPF, represent a sound plan for the authority.

50. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also

stresses the importance of Inspectors working in a pragmatic way with Councils towards achieving a sound local plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.

51. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.

53. For the reasons set out above the DtC set out in Section 33A has not been complied with.”

28. In the light of these conclusions the Inspector reached the overall decision that the duty to cooperate had not been complied with and therefore she was bound to recommend that the plan not be adopted.

The law

29. The SDLP, as a development plan document, has to be prepared in accordance with the provisions contained within Part 2 of the Planning and Compulsory Purchase Act 2004. Section 19 of the 2004 Act sets out certain requirements in relation to the contents of a development plan document. The relevant provisions of section 20 of the 2004 Act in relation to independent examination are as follows:

“20. Independent examination

(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.

(2) But the authority must not submit such a document unless-

(a) they have complied with any relevant requirements contained in the regulations under this Part, and

(b) they think the document is ready for independent examination.

...

(4) The examination must be carried out by a person appointed by the Secretary of State.

(5) The purpose of an independent examination is to determine in respect of the development plan document-

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound and

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.

...

(7) Where the person appointed to carry out the examination-

(a) has carried it out, and

(b) considers that, in all circumstances, it would be reasonable to conclude-

(i) that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, and

(ii) that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation, the person must recommend that the document is adopted and given reasons for the recommendation.

(7A) Where the person appointed to carry out the examination –

(a) has carried it out, and

(b) is not required by subsection (7) to recommend that the document is adopted, the person must recommend non-adoption of the document and give reasons for the recommendation.

(7B) Subsection (7C) applies where the person appointed to carry out the examination-

(a) does not consider that, in all circumstances, it would be reasonable to conclude that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, but

(b) does consider that, in all circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation.

(7C) If asked to do so by the local planning authority, the person appointed to carry out the examination must recommend modifications of the document that would make it one that-

(a) satisfies the requirements mentioned in subsection (5)(a), and

(b) is sound.”

30. As can be seen from the provisions of section 20, of particular note for present purposes is the provision contained in section 20(5) that the purpose of the independent examination includes an examination of whether the plan is sound, and also whether the local planning authority has submitted a document that has been prepared in compliance with the duty under section 33A of the 2004 Act in relation to its preparation. By virtue of the provisions contained within section 20(7), (7B) and (7C), where the Inspector determines that it would not be reasonable to conclude that the local planning authority had complied with the section 33A duty then the Inspector can neither recommend modifications nor adoption of the document. This is in effect what happened in the present case.

31. It is not disputed that the duty under section 33A of the 2004 Act applied to the preparation of the local plan by virtue of section 33A(3) of the 2004 Act. The nature and content of the duty is described in the following provisions of section 33A:

“33A Duty to co-operate in relation to planning of sustainable development

(1) Each person who is—

(a) a local planning authority,

(b) a county council in England that is not a local planning authority, or

(c) a body, or other person, that is prescribed or of a prescribed description, must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising

the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

(3) The activities within this subsection are—

(a) the preparation of development plan documents,

(b) the preparation of other local development documents,

(c) the preparation of marine plans under the Marine and Coastal Access Act 2009 for the English inshore region, the English offshore region or any part of either of those regions,

(d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs

(a) to (c) that are, or could be, contemplated, and

(e) activities that support activities within any of paragraphs (a) to (c), so far as relating to a strategic matter.

(4) For the purposes of subsection (3), each of the following is a “strategic matter”—

(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and

(b) sustainable development or use of land in a two-tier area if the development or use—

(i) is a county matter, or

(ii) has or would have a significant impact on a county matter.”

32. It will be noted from section 33A(7) that a person who is seeking to comply with the duty to cooperate must have regard to guidance issued by the defendant on how that duty is to be complied with. Material in that regard is contained both within the National Planning Policy Framework (“the Framework”) and in the Planning Practice Guidance

(“the PPG”). The relevant provisions of the Framework dealing with the duty to cooperate are set out in paragraphs 24-27 of the Framework as follows:

“Maintaining effective cooperation

24. Local planning authorities and county councils (in two-tier areas) are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries.

25. Strategic policy-making authorities should collaborate to identify the relevant strategic matters which they need to address in their plans. They should also engage with their local communities and relevant bodies including Local Enterprise Partnerships, Local Nature Partnerships, the Marine Management Organisation, county councils, infrastructure providers, elected Mayors and combined authorities (in cases where Mayors or combined authorities do not have plan-making powers).

26. Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

27. In order to demonstrate effective and on-going joint working, strategic policy making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in national planning guidance, and be made publicly available throughout the plan-making process to provide transparency.”

33. Whilst addressing the provisions of the Framework it is worthwhile at this stage to note that the claimant’s argument includes the contention that the Inspector confused the requirements of the duty to cooperate with the examination of soundness required pursuant to the provisions of section 20(5). The policy in relation to whether or not a plan is sound is to be found in paragraph 35 of the framework in the following terms:

“35. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

- a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs and is informed by agreements with other authorities, so that

unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework.”

34. Turning to the PPG, it contains a considerable amount of guidance relating to the preparation of statements of common ground including their contents, subject matter and format. Of particular relevance to the issues in the present case are the provisions of the PPG dealing with the question of whether or not local planning authorities are required to reach agreement on strategic matters, and what should be done if they are unable to secure such agreements. The parts of the PPG dealing with this point are as follows:

“Are strategic policy-making authorities required to reach agreement on strategic matters, and what should an authority do if they are unable to secure these agreements?”

Strategic policy-making authorities should explore all available options for addressing strategic matters within their own planning area, unless they can demonstrate to do so would contradict policies set out in the National Planning Policy Framework. If there they are unable to do so they should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their plans for examination. Authorities are not obliged to accept needs from other areas where it can be demonstrated it would have an adverse impact when assessed against policies in the National Planning Policy Framework.

Inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or are not relying on the inspector to direct them. Where a strategic policy-making authority claims it has reasonably done all that it can to deal with matters but has been unable to secure the cooperation necessary, for example if another authority will not cooperate, or agreements cannot be reached, this should not prevent the authority from submitting a plan for examination. However, the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any

outcomes achieved; this will be thoroughly tested at the plan examination.”

35. In *Zurich Assurance Limited v Winchester City Council* [2014] EWHC 758 Sales J (as he then was) explained both the substance of the obligation imposed by section 33A and the role of the court in a challenge of the kind presently under consideration in the following terms:

“109. The duty to co-operate imposed by section 33A applies (so far as relevant in this case) in respect of the preparation of development plan documents “so far as relating to a strategic matter” (subsection (3)), as defined in subsection (4) (“sustainable development or use of land that has or would have a significant impact on at least two planning areas, [etc]”). The question of whether development or use of land would have a significant impact on two planning areas is a matter of planning judgment.

110. The obligation (see subsection (1)) is to co-operate in “maximising the effectiveness” with which plan documents can be prepared, including an obligation “to engage constructively [etc]” (subsection (2)). Deciding what ought to be done to maximise effectiveness and what measures of constructive engagement should be taken requires evaluative judgments to be made by the person subject to the duty regarding planning issues and use of limited resources available to them. The nature of the decisions to be taken indicates that a substantial margin of appreciation or discretion should be allowed by a court when reviewing those decisions.

111. The engagement required under subsection (2) includes, in particular, “considering” adoption of joint planning approaches (subsection (6)). Again, the nature of the issue and the statutory language indicate that this is a matter for the judgment of the relevant planning authority, with a substantial margin of appreciation or discretion for the authority.

112. WCC was required to have regard to the guidance about co-operative working given in the NPPF: subsection (7).

113. The limited nature of the role for the court in a case like the present is reinforced by the structure of the legislation in relation to review of compliance with the duty to co-operate under section 33A. The Inspector is charged with responsibility for making a judgment whether there has been compliance with the duty: section 20(5)(c) of the 2004 Act. His task is to consider whether “it would be reasonable to conclude” that there has been compliance with the duty: section 20(7)(b)(ii) and (7B)(b). A court dealing with a challenge under section 113 of the Act to the judgment of an inspector that there has been such compliance is therefore limited to review of whether the inspector could

rationally make the assessment that it would be reasonable to conclude that there had been compliance by a planning authority with this duty. It would undermine the review procedures in the Act, and the important function of an inspector on an independent examination, if on a challenge to a plan brought under section 113 the court sought to circumvent this structure by applying any more intrusive form of review in its own assessment of the underlying lawfulness of the conduct of the planning authority itself. A rationality standard is to be applied in relation to the decision made by the Inspector and in relation to the underlying decision made by WCC.”

36. In the subsequent case of *Trustees of the Barker Mill Estates v Test Valley Borough Council* [2017] PTSR 408 Holgate J endorsed and adopted the analysis of Sales J in *Zurich Assurance* (see paragraphs 55-57). Since the claimant places some reliance upon the conclusions of Holgate J in relation to the particular facts of that case it is necessary to set out Holgate J’s agreement in summary with Sales J, and then his analysis of the issues which arose in that case and how he resolved them. These points are dealt with in the following paragraphs of his judgment:

“58. In agreement with Sales J I consider that:—

(i) The question posed by section 20(7B)(b) of PCPA 2004 is a matter for the judgment of the Inspector;

(ii) The Court's role is limited to reviewing whether the Inspector could rationally make the assessment that

(ii) The Court's role is limited to reviewing whether the Inspector could rationally make the assessment that it would be “reasonable to conclude” that the LPA had complied with section 33A ;

(iii) It would undermine the structure of PCPA 2004 and the procedure it provides for review by an independent Inspector if, on a challenge made under section 113 , the Court sought to apply a more intrusive form of review in its assessment of the underlying lawfulness of the LPA's conduct or performance; form of review in its assessment of the underlying lawfulness of the LPA's conduct or performance;

59. The challenge under ground 2 is therefore directed to the Inspector's report, in particular paragraphs 10 to 14 where he stated:—

“10. On the first day of the Hearing a submission was made by a representor to the effect that the Council had failed in relation to the DtC [the duty to co-operate]. This was discussed in some detail at the Hearing, and in public correspondence between the representor, the Council and myself. The most important element of this submission was that the Council's identified affordable

housing need figure is 292 dwellings per annum (d.p.a.) (clarified by MM/5/1 ), with certain caveats, whereas the expected provision is 206 d.p.a. The Council put forward reasons for this position, but the DtC issue relates to the fact that the Council had not asked neighbouring authorities whether they could accommodate some or all of the identified shortfall.

11. There is nothing to suggest the extent to which any shortfall in affordable housing provision within Test Valley would lead to displaced demand affecting some or all of the eight adjoining authorities.

12. The objective of the DtC is to maximise the effectiveness of the plan making process. In this case the overall manner in which the Council has worked with other authorities, particularly but not exclusively in the southern part of the Borough, is impressive. In the light of their considerable experience, Council officers presented me with a very clear picture of the position of adjoining authorities in relation to affordable housing. To have made a formal request to adjoining authorities for assistance with affordable housing, when the Council knew full well what the answer would be, would not have been effective or productive.

13. In subsequent correspondence the representor also stated that there would be a shortfall in market housing, and that the DtC would additionally be triggered in this respect. However, as I conclude (below) that the RLP will meet the full OAN for market housing, this matter does not trigger the DtC.

14. The Council has clearly taken into account the wider strategic context and the interrelationships with neighbouring areas, particularly in terms of housing markets and employment patterns. I am satisfied that the Council has engaged constructively, actively and on an ongoing basis with relevant local authorities and organisations, and I conclude that the DtC has been met.

...

60. The Claimants submit that where an LPA cannot meet its own FOAN for affordable housing then it must “explore under the ambit of the duty to co-operate whether any unmet needs can be met within adjacent LPAs” (paragraph 68 of skeleton). The proposition is said to be based upon paragraphs 104 and 106 of the judgment of Hickinbottom J in *Gallagher* . But in fact the Judge did not determine any issue in relation to section 33A nor did he lay down the proposition for which the Claimants contend.

61. It is to be noted that the Claimants' proposition is limited in scope. This is not a case where non-compliance with section 33A is said to have occurred because the Defendant failed to address

the inclusion of a policy in its plan for meeting needs arising outside its area. The Claimants simply argue that TVBC should have “explored” with other LPAs the issue of whether the shortfall in meeting the FOAN for affordable housing in its area could be dealt with in their areas. In essence, this is the same complaint as that raised at the Examination, namely that TVBC failed to put this question to the other authorities.

62. The Claimants were not at all precise as to what the use of the term “explore” should be taken to mean, although it lies at the heart of the ground of complaint. By implication the Claimants recognise that TVBC was not in a position to complete other authorities to provide for TVBC's shortfall and that they might legitimately say that they were unable to assist. Here the word “explore” suggests obtaining sufficient information about affordable housing needs in the areas of other LPAs and their ability to satisfy their own needs and any additional needs from other areas. In the light of that information a plan-making authority could decide, as a matter of judgment, whether it would be worthwhile to pursue negotiations with one or more other authorities to assist with its shortfall.

63. In this case the Claimants made no attempt to show the Court that TVBC either lacked this information or that, in the light of the information it had, TVBC's judgment that there was no point in pursuing negotiations with other authorities on this point was irrational. In his reply, Mr Cahill QC confirmed that the only criticism of the Inspector's report is one of irrationality and is limited to the last sentence of paragraph 12, in which he had said that there had been no need for TVBC to make a “ formal request” to adjoining authorities when it knew full well what the answer would be. He also stated that no legal criticism is made of the penultimate sentence of paragraph 12 in which the Inspector said that TVBC's officers had given him a very clear picture of the position of adjoining authorities in relation to affordable housing.

64. In fact, paragraph 12 is a summary of what the Inspector had been told during the Examination. In inquiry document IN009 (dated 19 December 2014) the Inspector explained that the extent of cross-boundary working had been explained by TVBC not only in its “Duty to Co-operate Statement” but also in the Hearing sessions, including one devoted to affordable housing. TVBC had been actively engaged in the production of a number of informal strategies and evidence based studies with other authorities and stakeholders. The extent of the working with other authorities was described by the Inspector as “impressive”. It was from this information that he reached the judgment that TVBC's officers were “fully aware that other authorities would not be in a position to assist with any shortfall”. Plainly the

Inspector relied upon this information when writing paragraph 12 of his Report on the Examination.

65. When paragraph 12 of the Report is read properly in the context of the material which was before the Examination, the Inspector, in his review of TVBC's performance, was entitled to reach the conclusions that (i) they had obtained sufficient information from the cross-boundary work which had in fact taken place on whether adjoining authorities would be able to provide affordable housing to meet any part of needs arising within TVBC's area and that (ii) it would have been pointless to make a "formal request" for assistance in meeting TVBC's shortfall. It is impossible for the Court to treat to Inspector's conclusions as irrational and so ground 2 must be rejected."

37. In *R(on the application of St Albans City and District Council) v SSCLG and others* [2017] EWHC 1751 Sir Ross Cranston dealt with an application for judicial review in which it was contended that an Inspector's conclusion that the duty to cooperate had not been satisfied was unlawful. The factual circumstances of that case involved the claimant's argument that the Inspector had failed to properly take into account the polarised position or impasse which had emerged in relation to contentions between the claimant and the adjoining local planning authorities with respect to the housing market. Having accepted and endorsed the approach taken in *Zurich Assurance* and *Trustees of Barker Mills*, Sir Ross Cranston concluded that the reasons provided by the Inspector demonstrated that he was fully aware of the disagreement between the council and adjoining local planning authorities in relation to the definition of the housing market area and appreciated the issue. The judge was satisfied that the decision adequately reasoned the conclusions that the Inspector had reached. In paragraph 51 of the judgment Sir Ross Cranston went on to accept the defendant's submission "that once there is disagreement, I would add even fundamental disagreement, that is not an end of the duty to cooperate". He concluded that the duty to cooperate remained active and ongoing "even when discussions seemed to have hit the buffers". Whilst in reaching this conclusion he placed some reliance on a decision of Patterson J in *R(on the application of Central Bedfordshire Council) v SSCLG* [2015] EWHC 2167 (Admin), which the parties in the present case accepted could not be authoritative as it was a permission decision which did not contain a statement that it could be cited in accordance with the Practice Direction on the Citation of Authorities, 9 April 2001 and, furthermore, was overturned by the Court of Appeal in granting permission to appeal.. Nonetheless the observations of Sir Ross Cranston are in my judgment properly capable of being considered as free standing, relevant and reliable, bearing in mind the fact-sensitive nature of the judgment which has to be reached in each individual case in which the duty to cooperate is being examined, and taken in the context of the particular facts of the case he was considering.

#### Submissions and conclusions

38. On behalf of the claimant Ms Saira Kabir Sheikh QC advances the case on four grounds. The first ground is that the Inspector failed when reaching her conclusions to apply the margin of appreciation which ought to be afforded to the claimant pursuant to section 33A of the 2004 Act. It is Ms Sheikh's submission, based upon both the wording of the statute and also the decisions in *Zurich Insurance* and *Barker Mills*, that when

considering whether or not the claimant had discharged the duty to cooperate in preparing the plan the Inspector was required to afford a margin of appreciation to the claimant and she failed to do so. In particular Ms Sheikh relies upon the contention that the Inspector sought to substitute her own judgment for that of the claimant and adjoining authorities where, for instance, in paragraph 29 of her report she concludes that, notwithstanding the fact that the adjoining authorities indicated that there had been regular constructive and cooperative liaison, she was not satisfied that that had in fact taken place. The discarding of the opinions of adjoining authorities demonstrated that the Inspector had failed to afford the claimant the margin of appreciation to which it was entitled.

39. Moreover, Ms Sheikh disputes the contention that the Inspector applied the correct test in reaching her conclusions: whilst the Inspector made assertions about unmet housing need being met elsewhere outside the claimant's administrative area, in reality the claimant was fully aware from its engagement with neighbouring authorities that there was no possibility of unmet housing need being met elsewhere. The Inspector's approach, for instance in paragraph 37 of her report, demonstrates that the Inspector's focus was upon what a local planning authority might do in the event of unmet housing need arising and was not focused on the particular circumstances of the claimant and its own knowledge and judgment as to what might be expected from any dialogue with adjoining authorities. Effectively, the whole tenor of the Inspector's report reflects the substitution of her own judgment for that of the claimant, without affording the claimant the margin of appreciation to which they were entitled.
40. Ms Sheikh also contends that her approach to the statements of common ground illustrated a similar error. The statements of common ground illustrated the depth and extent of the claimant's engagement with adjoining authorities, and her assertion that these had been drafted too late to influence the plan misunderstood both her role and the proper approach to be taken to the duty to cooperate.
41. In response to these submissions Mr Richard Moules, on behalf of the defendant, submits that when the Inspector's report is read as a whole it is clear that she has applied the correct approach. She started from the proposition that the plan had been submitted by the claimant in what it considered to be a legally compliant and sound form. In paragraph 37 of her report she clearly applied the test of what it was "reasonable to expect" the claimant to have done in the circumstances which arose. Fundamentally, Mr Moules submits that the present case had little to do with the margin of appreciation, on the basis that the Inspector's judgment as to what the claimant had done demonstrated that in fact they had done nothing constructive to explore addressing unmet housing need at the appropriate time during the plan's preparation. The Inspector concluded that the claimant could reasonably have been expected to do something in the circumstances which arose when the extent of unmet need emerged, but in fact did nothing.
42. Moreover, Mr Moules maintains that the Inspector was entitled to scrutinise the assertions of the adjoining authorities and if she concluded that, having evaluated all of the available evidence, it was not "reasonable to conclude" that the duty to cooperate had been satisfied then she was entitled to reach the conclusion which she did. Further, in applying the statutory tests at paragraph 26 of the Framework, the Inspector needed to examine whether the claimant had taken reasonable steps to explore meeting its unmet housing need. In doing so the Inspector was not effectively adopting the

approach of asking what a hypothetical authority would have done but was rather discharging the statutory tests on the facts of this particular case. The undoubted existence of the margin of appreciation should not stand in the way or act as a disincentive to local planning authorities working together to help to solve difficult and controversial problems of, for instance, unmet housing needs where the authority areas are the subject of environmental constraints.

43. Turning to Ground 2, Ms Sheikh contends that in reaching her conclusions the Inspector failed to correctly interpret and apply the duty to cooperate and conflated it with the statutory requirement that the plan should be sound. Central to her submission is that the Inspector misdirected herself by working backwards from evidence which might go to the soundness of the plan to reach conclusions on whether or not the duty to cooperate had been discharged. She worked backwards from the existence of unmet need to reach a conclusion that there had been a failure to comply with the duty to cooperate. This confused and conflated the two issues of the duty to cooperate and soundness. The evidence of this error exists, for instance, in paragraphs 17 and 24 of the Inspector's report in which she focusses on the existence of unmet need and the failure to resolve that issue. Ms Sheikh submits that the reality was that at the stage that unmet need was clearly identified it was well known that it could not realistically be met elsewhere. In effect, the Inspector erroneously considered the duty to cooperate in the light of the unmet housing need, rather than examining the requirements of the duty to cooperate itself in order to understand whether it had been discharged. The issue of unmet need and whether the housing figures and delivery proposed by the SDLP were justified was an issue connected with soundness and not the duty to cooperate.
44. In response to these submissions Mr Moules contends, firstly, that the Inspector was careful to distinguish between the duty to cooperate and the requirements of soundness in the substance of her report. Secondly, Mr Moules submits that when the Inspector's decision is properly understood, it correctly distinguished between the duty to cooperate and soundness. The problem, as identified by the Inspector, did not lie in the existence of unmet housing need in and of itself but rather in the claimant's failure to engage with adjoining authorities constructively, actively and on an ongoing basis in order to consider an attempt to find a solution that that unmet housing need at the time when it emerged. The Inspector recognised, in particular in paragraph 39 of her report, that it may not be possible for the claimant's housing need to be met in full, but concluded that earlier and fuller proactive engagement might have made it "significantly more likely to result in an effective strategy for meeting Sevenoaks' unmet need". In truth, Mr Moules contends that the claimant highlights two paragraphs (paragraphs 17 and 24) which in fact exemplify the Inspector addressing and setting out the essence of the claimant's failure to engage in ongoing active and constructive engagement with the neighbouring authorities in relation to the strategic issue of unmet housing need, rather than confusing the questions arising under the duty to cooperate with those which arose in respect of soundness.
45. Turning to Ground 3, Ms Sheikh on behalf of the claimant submits that the Inspector failed to have regard to the available material evidence furnished by the claimant. The evidence demonstrated that the claimant was both aware that there would be an unmet need, but also as a result of its duty to cooperate discussions with adjoining authorities was aware that regardless of the scope of the unmet need neighbouring authorities would not be able to assist. This point is not grappled with, she submits, by the

Inspector, and, in particular, the Inspector fails to grapple with the extensive environmental constraints that each of the authorities have to work with. In addition, Ms Sheikh submits that the statements of common ground ought not to have been disregarded in the way the Inspector did by treating them as too late to influence the SDLP. In fact, that documentation reflected years of discussions between the authorities and was highly relevant to demonstrate that the duty to cooperate had been discharged. Further, the lack of a formal request for assistance from the claimant did not demonstrate non-compliance with the duty to cooperate: the reason that no formal request was made was because as a result of the exercise of the duty to cooperate the claimant was well aware that unmet need could not be met elsewhere.

46. In response to these submissions Mr Moules submits that, firstly, the Inspector addressed whether or not there had been discussion of meeting unmet need for a considerable time and concluded on the evidence, as she was entitled to, that there was no evidence to support the claimant's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities (see paragraph 35). Secondly, Mr Moules submits that the Inspector was clearly aware of the constraints under which both the claimant and the adjoining authorities operated: these were referred to at several points during the course of her report. Thirdly, the Inspector explained clearly her conclusion that the claimant had neither demonstrated that it had constructively and actively pursued solutions to the unmet housing need it had identified with its neighbours at the appropriate time during preparation of the plan, nor that cooperation with its neighbours was an impossibility in respect of meeting any of the unmet housing need arising. Fourthly, Mr Moules submits that, again, the Inspector clearly explained for good reason that the statements of common ground had arrived too late in the process to support the conclusion that the duty to cooperate had been complied with. Fifthly, the claimant's complaint in relation to the Inspector's view on the lack of the formal request to neighbouring authorities is submitted by Mr Moules to be simply another disagreement on behalf of the claimant with the Inspector's planning judgment that it was unreasonable for the claimant to do nothing by way of meaningful exploration of solutions to meet the identified housing need shortfall.
47. Finally, by way of Ground 4, Ms Sheikh submits that the Inspector failed to give adequate reasons for the claimant's failure to comply with the duty to cooperate or, alternatively, the Inspector's conclusion was irrational. In particular it is submitted that the Inspector failed to provide adequate reasons as to why weight was placed upon the claimant's failure to make a formal request for assistance earlier and further failed to adequately reason why she disregarded the evidence of neighbouring authorities in relation to the duty to cooperate, or why she suggested that the statements of common ground did not provide evidence of compliance to cooperate. In the light of the evidence the Inspector's conclusions were irrational.
48. In response to these submissions Mr Moules submits that the Inspector's conclusions on each of the issues relied upon were clear and entirely rational. As the Inspector explained, had formal requests for the adjoining authorities been made as soon as the full extent of the claimant's unmet housing need became apparent then it may have been possible through constructive engagement to achieve a more positive outcome and maximise the effectiveness of the plan (see paragraphs 37-39 of the Inspector's report). The Inspector's reasoning showed that the neighbouring authorities' views were taken

into account, but as the Inspector explains they could not allay the concerns that she had clearly identified. The statements of common ground were, for the reasons the Inspector gave, provided too late to furnish evidence of compliance with the duty to cooperate in relation to the unmet housing need identified. Finally, Mr Moules submits that it is unarguable that the Inspector's conclusion was irrational.

49. In forming conclusions in relation to these competing submissions it is necessary, in my view, firstly to analyse the substance of the legal issues which arise in relation to the duty to cooperate under section 33A of the 2004 Act. Thereafter, secondly, it is important in my view to be clear as to the nature of the decision which the Inspector reached and the specific basis for her conclusions.
50. As described in paragraph 33A(2)(a) the duty to cooperate, when it arises, requires the person who is under the duty "to engage constructively, actively and on an ongoing basis" in relation to the preparation of a development plan document (see paragraph 33(A)(3)(a)) "so far as relating to a strategic matter" (see paragraph 33A(3)(e)) to "maximise the effectiveness" of the activity of plan preparation. Whilst during the course of her submissions Ms Sheikh points out that activities were undertaken by the claimant in relation to a broad range of strategic issues concerned with infrastructure and wider environmental designations, and she relied upon the numerous strategic matters with which the claimants were concerned in preparing the SDLP, it is in my view clear that the duty to cooperate arises in relation to each and every strategic matter individually. There was, therefore, no error involved by the Inspector in the present case focussing upon one of those strategic matters in reaching her conclusions in respect of the duty to cooperate.
51. I accept the submission made by Ms Sheikh that discharging the duty to cooperate is not contingent upon securing a particular substantive outcome from the cooperation. That was a proposition which was not disputed by Mr Moules. I accept, however, his submission that the duty to cooperate is not simply a duty to have a dialogue or discussion. In order to be satisfied it requires the statutory qualities set out in section 33A(2)(a) to be demonstrated by the activities comprising the cooperation. As Sales J observed in paragraph 110 of *Zurich Assurance*, deciding what ought to be done to meet the qualities required by section 33a(1)(c)(2)(a) "requires evaluative judgments to be made by the person subject to the duty regarding the planning issues and use of limited resources available to them." As Sales J also observed, bearing in mind the nature of the decisions being taken a court reviewing the decision of an Inspector making a judgment in respect of whether there has been compliance with the duty will be limited to examining whether or not the Inspector reached a rational decision, and will afford the decision of the Inspector a substantial margin of appreciation or discretion. It is against the background of these principles that the submissions of the claimant fall to be evaluated.
52. The second issue is, as set out above, to be clear as to the nature of the decision which the Inspector reached. In that connection, in my judgment the submissions made by Mr Moules in relation to Ground 4 are plainly to be preferred. Having carefully examined the Inspector's conclusions they were, in my judgment, clearly expressed and set out in detail the reasons for the conclusions that she reached. I am unable to identify any defect in the reasoning of her report which sets out clearly and in full detail her conclusions and the reasons for them.

53. It is clear from the report that the conclusions of the Inspector were that the claimant became aware of the detailed extent of its unmet housing need after the Regulation 18 consultation which ceased on the 10 September 2018 (see paragraph 27 and paragraph 35). The first minutes of a duty to cooperate meeting referring to addressing unmet housing need in the claimant's area was on 13 March 2019, after the Regulation 19 consultation on the SDLP, and seven weeks prior to submission of the SDLP for examination (see paragraph 23). The minutes of the duty to cooperate meetings provided "no substantial evidence that the council sought assistance from its neighbours in meeting its unmet housing need" prior to the publication of the Regulation 19 version of the SDLP (see paragraph 24). The claimant did not request assistance from Tunbridge and Malling Borough Council during the course of Regulation 19 consultation on the Tonbridge and Malling Local Plan between 1 October and 19 November 2018 to assist with unmet housing need in the claimant's area (see paragraph 27), and only made formal request to ask whether or not Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council would assist in meeting the claimant's unmet housing need after the Regulation 19 consultation had been completed and just prior to submitting the plan for examination (see paragraphs 27 and 28). The statements of common ground were completed after the submission of the plan for examination and prepared too late to influence the content of the plans preparation (see paragraphs 32 and 33). Whilst the claimant contended that discussions had already indicated prior to the extent of unmet housing need emerging following the Regulation 18 consultation and further engagement was not undertaken because it had already been indicated that an unmet need of 600 dwellings could not be accommodated, the Inspector concluded that there was no evidence to support the assertion that discussions had already indicated an unmet need of 600 dwellings could not be accommodated (see paragraph 35).
54. Thus, the Inspector concluded in paragraph 37 of her report that it was reasonable to expect that the claimant would, after the extent of the unmet housing need emerging following the Regulation 18 consultation, have undertaken constructive engagement in an attempt to resolve the issue prior to the publication of the Regulation 19 version of the plan. Whilst that process may or may not have been fruitful, the Inspector observed that "it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place". The peer review process did not assist: the PAS workshop was undertaken at a very late stage the plan process and "if the engagement had occurred as soon as the council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome" (see paragraph 43). The visiting Inspector raised issues which were not adequately resolved before the plan was submitted (see paragraph 44).
55. From this distillation of the Inspector's conclusions and reasoning it is clear to see that there is no substance in the claimant's grounds. In my view it perhaps makes most sense to start with the claimant's Ground 2, the contention that the Inspector failed to properly interpret and apply the duty to cooperate and conflated it with the requirement for soundness. In my view there is no basis for this contention when the Inspector's conclusions and reasons are properly understood. Firstly, as to the application of the test it is clear from paragraph 37 that the Inspector directed herself to whether, in accordance with the requirements of section 20(7)(a)(ii), it was reasonable for her to conclude that the duty to cooperate had been complied with. She found that once the

extent of the unmet need emerged after completion of the Regulation 18 consultation on the SDLP, the claimant should have contacted its neighbouring authorities and engaged constructively in an attempt to resolve the issues arising from its unmet housing needs. Her conclusion that there was no communication, let alone engagement, in between the emergence of this issue and embarking upon a Regulation 19 consultation underpinned her conclusion that there had not been constructive, active and ongoing engagement in relation to that issue. It is clear from paragraphs 37 and 43, and indeed from the totality of her reasoning, that what she was scrutinising and assessing was not the identification of a particular solution for the strategic issue of unmet housing need, but rather the quality of the manner in which it had been addressed. Her conclusions were, based on her factual findings as to what in fact happened after the Regulation 18 consultation disclosed the extent of the unmet housing need, that no constructive and active engagement was undertaken at the time when it was required in advance of the Regulation 19 version of the SDLP being settled. These conclusions properly reflected the statutory requirements and the evidence which was before the Inspector and do not disclose any misdirection on her part, or confusion between the requirements of the duty to cooperate and the requirements of the soundness with respect to this strategic issue.

56. Turning to Ground 1 there is force in the submission made by Mr Moules that, in truth, this is a clear-cut case based on the findings that the Inspector reached. As set out above, the Inspector concluded (as she was entitled to on the evidence before her) that at the time when the strategic issue in relation to unmet housing need crystallised, there was no constructive, active or ongoing engagement and, indeed, the matter was not raised with neighbouring authorities until after the Regulation 19 consultation on the SDLP and at a very late stage in plan preparation. Requests made of neighbouring authorities on the 11 April 2019 post-dated the Regulation 19 consultation and were shortly prior to the plan being submitted. In those circumstances the Inspector was entitled to conclude that these discussions were not taking place at a time when they could properly inform and influence plan preparation and maximise the effectiveness of that activity. As the Inspector recorded in paragraph 37, she found, as she was entitled to, that had engagement occurred after the Regulation 18 consultation and prior to the Regulation 19 consultation “it might have resulted in a more positive outcome”. Further, as the Inspector recorded, the possibility that it may have led to the same outcome was nothing to the point. Effective, constructive and active engagement had not taken place at the time when it was required. By the time there was communication in respect of the issue it was too late.
57. Although the claimant stressed its belief that whenever called upon to do so neighbouring authorities would have refused to provide assistance, I am not satisfied that this provides any basis for concluding that the Inspector’s conclusions were irrational. Indeed, as she notes, Tunbridge Wells Borough Council noted in its written material that if the request to address the claimant’s unmet housing need had been made at any point prior to the submission of its comments on the Regulation 19 version of the plan then their response would have addressed the issue more fully. There was, therefore, evidence before the Inspector to support her judgment in this respect. In the light of these matters I am unable to accept that there is any substance in the claimant’s Ground 1. There is no justification for the suggestion that the Inspector failed to afford a margin of appreciation to the claimant in reaching her conclusions; the clear-cut nature of the conclusions which the Inspector reached were fully set out and ultimately

the Inspector was required by section 20 of the 2004 Act to reach conclusions in relation to the statutory test which she did.

58. Turning to the submissions in relation to Ground 3, I am unable to accept that the Inspector failed to have regard to the material which was available to her in reaching her conclusions. It is clear to me from the detail of the report that the Inspector had regard to all of the evidence that had been placed before her. The Inspector clearly addressed the detailed material in relation to the duty to cooperate meetings and the preparation of joint evidence. She also engaged with the existence of statements of common ground and the views of the neighbouring local authorities. She gave careful consideration to the peer review which had been undertaken and reflected on the responses from adjoining authorities to request they meet unmet housing need from the claimant and the environmental constraints under which the claimant had to operate. In my view the submissions advanced in respect of Ground 3 effectively amount to a disagreement with the Inspector on the conclusions which she ought to have forged based upon the material which was before her. Ultimately, the availability of this evidence did not dissuade the Inspector from reaching the conclusions which she did in respect of quality and timing of the engagement in the present case: the generality of the position presented by the claimant does not gainsay the detailed conclusions reached by the Inspector as to the nature of the duty to cooperate activities, or lack of them, at the critical point of time when the extent of nature of the unmet housing need emerged at the conclusion of the Regulation 18 consultation. In my view it is clear that the Inspector had careful regard to all of the material which was placed before her and reached conclusions which, I have already set out in respect of my views on Grounds 1 and 2, were lawful and appropriate.
59. I have already expressed my view as to the quality and nature of the reasons provided by the Inspector in respect of the examination. In my view her reasons were clear, full, detailed and justified. In addition, under Ground 4 it is contended that the conclusion which she reached was irrational. In my judgment there is no substance whatever in that contention. For the reasons which I have already given the Inspector's conclusions were clearly open to her and based upon a proper appreciation and application of the relevant statutory tests.
60. It follows that for all of the reasons set out above I am satisfied that there is no substance in any of the grounds upon which this claim is advanced and the claimant's case must be dismissed.



## Appeal Decision

Inquiry held on 9-12 December 2014

Site visit made on 12 December 2014

by **John Felgate BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 January 2015

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**Appeal Ref: APP/A1720/A/14/2220031**

**Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Village Green PLC against the decision of Fareham Borough Council.
  - The application Ref P/13/1121/OA, dated 20 December 2013, was refused by notice dated 11 March 2014.
  - The development proposed is "*erection of 37 dwellings together with associated access and parking for existing play area*".
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### DECISION

1. The appeal is allowed and planning permission is granted for the erection of 37 dwellings together with associated access, and parking for the existing play area, on land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick, Hampshire, in accordance with the terms of the application, Ref P/13/1121/OA, dated 20 December 2013, subject to the conditions set out in the attached schedule.

### PRELIMINARY MATTERS

2. The planning application seeks outline permission with all matters reserved except for access, which is proposed to be from Swanwick Lane, adjacent to the existing play area. The application is accompanied by an 'Indicative Layout' (Plan No PP1220-101-00, Revision P2), but in relation to all matters other than access, that plan is purely illustrative.
3. The Council's decision notice listed four refusal reasons (RRs). RR2 related to affordable housing and ecological mitigation. Since then however, the appellants have entered into a legal undertaking which provides for ecological mitigation by way of a financial contribution. And with regard to the affordable housing, the Council now accepts that this could be secured by condition. RR2 was therefore not pursued at the inquiry.
4. RR3 related to noise. Subsequently, the appellants have submitted a noise survey report. In the light of this report, it is now agreed that any issues relating to this matter could also be deal with by condition.
5. RR4 contained a list of the submitted plans. The Council now accepts that since this did not in fact state any reasons for objection, it should not have

appeared as an RR. The only one of the original refusal reasons that remains at issue between the parties is therefore RR1.

6. As well as dealing with ecological mitigation, the legal undertaking provides for the implementation of a landscaping scheme and a woodland management plan, and the setting up of a management company with responsibility for the upkeep and maintenance of the landscape and woodland areas within the proposed development.

## **PLANNING POLICY BACKGROUND**

### **The development plan**

#### *The Fareham Borough Local Plan (the FBLP), adopted March 2000*

7. The FBLP was designed to accord with the former Hampshire Structure Plan Review. Its intended plan period was 1999-2006. In 2007, a large number of the FBLP's policies were saved by a direction from the Secretary of State. The majority of those have since been replaced by the 2011 Core Strategy, but some have continuing effect.
8. Saved Policy DG4, which applies throughout the District, states that development will be permitted, provided that various requirements are met. These include that proposals should not detract from the natural landform, and should respect inward and outward views.
9. On the proposals map, the appeal site is included in an area designated as countryside.

#### *The Fareham Core Strategy (FCS), adopted August 2011*

10. The FCS has a plan period of 2006-26. It was intended to conform with the regional strategy contained in the South-East Plan (the SEP), approved in May 2009. It was also prepared in the context of the then-emerging South Hampshire Strategy (the SHS), a non-statutory sub-regional plan by the Partnership for Urban South Hampshire (PUSH), a consortium of 11 local authorities<sup>1</sup>.
11. Policy CS6 sets out the development strategy, which is to focus new development in various specified locations. One of these is the Western Wards, which includes Lower Swanwick. Priority is to be given to the re-use of previously developed land within defined settlement boundaries<sup>2</sup>. Policy CS9 sets out further criteria for development in the Western Wards, which include protecting the setting of the existing settlements.
12. Outside defined settlement boundaries, Policy CS14 states that development will be strictly controlled, to protect the landscape character, appearance and function of the countryside and coastline. In coastal locations, the policy seeks to protect the special character of the coast, when viewed from land or water.
13. Policy CS17 seeks to encourage good design which responds positively to the key characteristics of the area, including its landscape.

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<sup>1</sup> The SHS later became informally adopted by the partnership authorities in October 2012

<sup>2</sup> The FCS does not include any new proposals map of its own. The plan is accompanied by an 'interactive proposals map', but this is stated not to form part of the adopted plan itself. In the absence of any other indication, it appears that references in the FCS to 'defined settlement boundaries' relate to the boundaries shown on the proposals map of the FBLP. This interpretation is not disputed in the present appeal.

## **Emerging plans**

*The draft Development Sites and Policies DPD (the DSP), submitted June 2014*

14. The DSP is intended to provide for the development requirements identified in the FCS up to 2026, and also the increased levels of housing and employment proposed over the same period in the SHS. The DSP covers the whole of the District except for the proposed new community of Welborne.
15. On the DSP's proposals map, the appeal site forms part of an 'area outside of defined settlement boundaries'. In such areas, draft Policy DSP7 proposes a presumption against new residential development.
16. At the time of writing this decision, the draft DSP has completed the hearing stage of its public examination, and is awaiting the Inspector's report. Until then, the plan remains subject to unresolved objections in respect of the policies and designations relevant to the present appeal. As such, it carries limited weight.

*The draft Welborne Plan (the WP), submitted June 2014)*

17. The draft WP is an area action plan which sets out policies and proposals for the development of the new settlement, over a period running to 2036. At present, the WP has reached the same stage as the DSP, and is awaiting the Inspector's report. In so far as the WP is relevant to the present appeal, it is subject to unresolved objections, and thus its weight is limited.

## **National policy and guidance**

*The National Planning Policy Framework (the NPPF)*

18. The NPPF states at paragraph 6 that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 9 states that sustainable development involves seeking positive improvements in the quality of the environment and in people's quality of life; amongst other things, this includes widening the choice of high quality homes. Paragraph 14 states that there is a presumption in favour of sustainable development.
19. Paragraph 17 sets out core planning principles. These include proactively driving and supporting sustainable economic development to deliver the homes and other development that the country needs. Every effort should be made objectively to identify and then meet those needs, and to respond positively to opportunities for growth. The core principles also include recognising the intrinsic character and beauty of the countryside, conserving and enhancing the natural environment, and focusing development in sustainable locations.
20. At paragraph 47, the NPPF seeks to boost the supply of housing significantly. Local plans should aim to meet the full, objectively assessed need for market and affordable housing, as far as is consistent with other NPPF policies. Paragraph 49 states that policies for the supply of housing should not be considered up to date if a 5-year supply of deliverable housing sites cannot be demonstrated.
21. Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes. Paragraph 114 seeks to maintain the character of the undeveloped coast and its distinctive landscapes.

22. Paragraphs 186 and 187 requires that all planning decisions should be approached positively, by looking for solutions rather than problems, and that applications for sustainable development should be approved where possible.

*Planning Practice Guidance (PPG)*

23. The PPG provides further guidance on the policies in the NPPF. Paragraph 8-001 makes it clear that the NPPF's aims for the natural environment are not limited only to areas that are formally designated. Sections 2a and 3 contain more detailed advice on assessing housing needs and land availability, to which I will refer further below.

**MAIN ISSUES**

24. In the light of the matters set out above, and all of the submissions before me, both oral and written, it seems to me that the main issues in the appeal are:
- Whether it can be demonstrated that the District has a 5-year supply of land for housing development, to satisfy the requirements of the NPPF;
  - And the proposed development's effects on the character and appearance of the area.

**REASONS FOR DECISION**

**Housing land supply**

25. The Council claims a housing land supply of over 13 years. The appellants contend that the true figure is only just over 3 years. The divergence results firstly from a fundamental difference as to the size of the requirement that is to be met, and also from various other smaller, but significant differences in both methodology and assumptions. I will deal with each of these differences below.
26. The Council's land supply calculations are based on meeting the requirements in FCS Policy CS2, plus a small uplift reflecting the additional requirements suggested in the 2012 SHS. The appellants accept that on this basis a 5-year supply can be demonstrated, but they contend that the FCS/SHS figures are the wrong basis for the calculation.
27. The appellants' own calculations are based on the housing need projections in the Strategic Housing Market Assessment (SHMA) report for South Hampshire, published in January 2014. The Council, whilst disputing the use of the SHMA figures over the FCS, maintains that a 5-year supply can be demonstrated on this basis too.

*The Council's preferred housing requirement - based on FCS Policy CS2*

28. The PPG advises that the starting point for assessing the 5-year land supply should be the housing requirement figure in an up-to-date adopted local plan, and that considerable weight should be given to such a figure (paragraph 3-030). In the case of Fareham, the FCS is an adopted plan, and is only a little over 3 years old since its adoption. In such circumstances, it might often be unnecessary to look any further.

29. However, the PPG goes on to make it clear that this is not always the case:

*"(Considerable weight should be given to the housing requirement figures in adopted local plans) ...unless significant new evidence comes to light. It should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs.*

*Where evidence in local plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered."*<sup>3</sup>

30. In the present case, the FCS's housing requirement was directly derived from the now-revoked SEP. That plan was itself based upon an earlier version of the SHS, approved by the member authorities as long ago as 2005, which in turn was based on evidence necessarily dating back to before that time. Having regard to the PPG advice therefore, it seems to me that the FCS appears to be an example of the kind of local plan that is envisaged as being potentially out-of-date: that is, one where the evidence base dates from long ago, and where circumstances have changed so that the plan may not now adequately reflect current needs.
31. Furthermore, the FCS pre-dates the NPPF. As already noted, the NPPF places emphasis on ensuring that local plans set out to meet the full objectively assessed need (OAN) for housing, as far as is consistent with other relevant policies. This is a significant change compared to the previous national policy in Planning Policy Statement 3 (PPS3), which was in place at the time when the FCS was adopted. Although the relevant part of the NPPF (paragraph 47) is couched in terms that relate principally to plan-making, the Courts have determined that the same principles should be assumed to apply equally in decision-making, including development control decisions<sup>4</sup>. In the Borough of Fareham, the Council accepts that the FCS was not informed by any assessment of full OAN, and neither does it attempt to explore how far the OAN could be met. It follows that, in respect of matters relating to housing needs and targets, the policies of the FCS cannot be said to be consistent with the approach advocated in the NPPF. Paragraph 215 of the latter makes clear that in such cases, development plan policies may carry less weight relative to national policy and other considerations.
32. It is true that the Council's land supply calculations are not reliant solely on the FCS, because they also take account of the 2012 SHS, which is a more recent document, based on data that is more up to date than the FCS. But the SHS, like the FCS, is not derived from any assessment of full OAN, and does not address the question of what is the OAN, or whether it can be met. In the absence of knowing the full OAN, it seems to me that the 5-year supply exercise cannot serve its intended purpose. Consequently, merely adding an SHS element onto the Policy CS2 housing requirement does not overcome the fundamental shortcomings of the FCS itself, or those of any land supply calculations based on it.
33. I therefore conclude that the weight that can be given to the Council's calculations, based on the FCS and the SHS, is limited. This being so, it seems to me that the next step must be to look at any other available evidence of housing needs, and to assess whether, for the purposes of this appeal, this is likely to provide a better guide to OAN.

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<sup>3</sup> PPG 3-030 (emphasis added)

<sup>4</sup> Gallagher Homes Ltd and Lioncourt Homes Ltd v Solihull MBC: [2014] EWHC 1283 (Admin)

*The alternative housing requirement - based on OAN*

34. I therefore turn to the appellants' proposed alternative, of using the figures from the 2014 SHMA report. In considering the SHMA, I have taken particular account of the letter on this subject from the Minister of State for Housing and Planning, issued on 19 December 2014, after the close of the inquiry, and the appeal parties' comments on the contents of that letter.
35. In the case of the South Hampshire SHMA, there can be no doubt that the report's intention and main purpose is to quantify the OAN, for the sub-region as a whole, and for its constituent housing market areas (HMAs) and districts. This aim is made clear, both in the report's own introduction, and in the officers' report which accompanied it to the PUSH joint committee, in January 2014. The SHMA report examines in considerable detail the various alternative demographic projections, market signals, economic trends, and the needs of different groups, including the need for affordable housing. Having done so, it presents a number of housing need scenarios, reflecting a range of differing assumptions. Without question, this is a substantial body of work, and one that appears both comprehensive and thorough.
36. The SHMA report pre-dated the coming into force of the PPG. However, it was prepared in the light of the earlier draft version, and against the established background of the NPPF, and its methodology appears broadly consistent with the subsequent guidance. The SHMA has yet to be fully tested, but nonetheless, it has evidently been accepted by the PUSH authorities, including Fareham, as a basis for the forthcoming review of the SHS and subsequent local plans. Moreover, the very fact that the SHMA has been commissioned jointly, on behalf of all the South Hampshire authorities, gives it added weight.
37. Certainly, the SHMA figures have not been moderated to allow for any constraints, or to take account of any opportunities for cross-boundary co-operation. However, these are not necessary for the purposes of defining the OAN. A good deal more work will be required before the SHMA figures can be translated into proposed housing policy targets. But that does not prevent those figures from being used in a 5-year land supply calculation now, because this is exactly what the PPG advises in a situation where the adopted plan has become out of date. At the inquiry, the Council's witness agreed that the SHMA represents the best and most up-to-date evidence of OAN currently available, and I see no reason to disagree with that view.
38. For these reasons, I conclude that the 2014 South Hampshire SHMA appears to represent a respectable and credible picture of the OAN for housing in Fareham. As such, it seems more likely to present a realistic picture of housing need than the FCS. Of these two options therefore, it seems to me that the SHMA provides the more suitable basis for a 5-year land supply calculation at the present time.

*The OAN figure*

39. Although the SHMA covers a wide range of alternative scenarios, there is agreement between the Council and the appellants that, if the SHMA-based approach is used, then the most appropriate set of figures for the purposes of this appeal is that referred to as 'PROJ2 - Midpoint Headship'<sup>5</sup>. This is

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<sup>5</sup> As set out in the SHMA report at Appendix U, Table 19 (on p51 of the Appendices)

essentially a demographic-based projection of housing need linked to the ONS sub-national population figures, with an adjustment for future changes in migration, and incorporating a household formation rate mid-way between those of the 2008-based and 2011-based DCLG projections. On this basis, Fareham's OAN, over the period 2011-36, would be 395 dwellings per annum.

40. Despite this measure of agreement, some of the evidence presented at the inquiry still questions whether 395 p.a. is high enough, having regard to the level of need in the affordable housing sector, and the need to avoid restricting economic growth. Even the Council's own witness admitted that economic trends were more likely to push the OAN up from that figure rather than down, and that on any basis, the full OAN was unlikely to be less than 395 p.a. However, it is not the function of this appeal to attempt to determine the future level of housing required in Fareham. The reason for exploring these matters is simply to choose the most appropriate figure for testing the 5-year supply at this point in time. None of the evidence identifies any other specific figure within the SHMA as being preferable to 395 dwellings per annum.
41. In passing, I note the Council's point that just because 395 p.a. is the average across the whole of the SHMA's 25-year period, that does not necessarily mean that the annual rate should be constant throughout. This may be so, but again, there is no specific evidence to support any alternative phasing. In the light of all the evidence before me, I conclude that 395 dwellings p.a. is a reasonably robust basis on which to proceed.
42. On this basis therefore, 5 years' worth of the annual OAN would be 1,975 dwellings. With the addition of a 5% buffer, which is not disputed, the overall 5-year requirement becomes 2,074 units<sup>6</sup>.

*The Council's suggested adjustment for over-delivery in previous years*

43. This requirement of 2,074 exceeds the Council's claimed supply of 1,926 dwellings<sup>7</sup>. However, the Council argues that the requirement should be reduced because, during the period 2006-14, housing completions exceeded the requirement in Policy CS2 by 401 units.
44. In putting forward this argument, the Council relies on paragraph 3-036 of the PPG, which states:
- "In assessing need, consideration may be given to evidence that a Council has delivered over and above its housing needs". (3-036)*
- In the light of this advice, the Council's case is essentially that this means that the past 'overprovision' should be deducted from the requirement for the next 5-year period, in full, irrespective of whether that requirement figure is based on the FCS or the SHMA.
45. I have considered this argument carefully. However, the PPG advice relates specifically to a situation where housing delivery has exceeded the area's housing needs, rather than a policy requirement. In this case, for the reasons explained above, I have come to the view that the Borough's housing needs are now more accurately expressed in the SHMA projections than in the FCS.

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<sup>6</sup> In the parties' evidence this is shown as 2,075, due to rounding the buffer from 19.75 to 20 units for each individual year

<sup>7</sup> As amended by Mr Home in oral evidence, from the figure of 1,876 which appears in the statement of common ground

Measured against the SHMA figure of 395 units per annum, there has been no over-provision or over-delivery.

46. I appreciate that the SHMA was only published in January 2014. But it relates to a period that started from April 2011, and it is therefore logical to take account of the housing needs that have arisen over the whole of that period. I fully accept that during 2011-14, the Council could not have been expected to meet a need which it was not aware of at the time, but that is not the point here<sup>8</sup>. With the benefit of the information now available, what was previously seen as an over-delivery against the FCS requirement during those three years, can now be seen to have been in reality a slight under-delivery compared to the level of actual need.
47. For the years 2006-11, there is no assessment of OAN. Housing completions in that period exceeded the relevant policy requirement in the FCS, but that does not mean that they exceeded the need. And in any event, this period prior to 2011 is now somewhat historic. I appreciate that 2006 was the start of the FCS period, but now that the FCS is no longer the best reference point for future housing needs, it becomes questionable whether housing completions from before 2011 have any continuing relevance.
48. Furthermore, even if I were to take a different view on these matters, so that the 401 dwellings over-delivery against the FCS were to be deducted from the SHMA-based requirement as suggested, it is far from clear why the whole of the 401 should be offset against the needs of just the next 5 years. I appreciate that this would mirror the 'Sedgefield method', but that approach is normally used where the past performance has been one of under-provision, and in that kind of situation there is consequently a clear imperative to achieve a rapid increase in the rate of delivery. In the reverse situation, as here, there is no such imperative. Arguably, the effect would be a sharp reduction, which would be at odds with the NPPF's aims to maintain continuity of supply and boost overall provision. The Council has presented no cogent rationale for this approach.
49. The PPG advice referred to above allows for consideration of the effects of past over-delivery, but does not specify what action should then be taken. It may be that in some circumstances an adjustment to the requirement for future years would be justified, but here, for the reasons that I have explained, that is not the case. I can see nothing in the PPG which sanctions the approach now proposed by the Council in deducting 401 units from the requirement side of the 5-year supply calculation.
50. I therefore conclude that no adjustment should be made in respect of the past over-delivery against the FCS requirement.

*The supply side: Welborne*

51. The Council anticipates 500 completions, within the 5-year period, at the proposed new settlement of Welborne. This is supported by the planning and development programme agreed with the scheme's promoters and other relevant agencies, which indicates work starting on site in March 2016, and the first 120 dwellings being completed by March 2017. The Council acknowledges

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<sup>8</sup> As noted at the inquiry, this argument might be relevant in other circumstances, such as where the point at issue relates to whether there has been 'persistent under-delivery' for the purposes of the NPPF buffer; but the issue here is distinct from that type of assessment

that this programme is both challenging and ambitious, but regards it as achievable.

52. However, the planned scheme is for a very large development, amounting to some 6,500 dwellings overall, plus employment, retail and other land uses. In terms of the practicalities of development, the site is completely undeveloped land, and major new infrastructure works of all kinds will be needed. A connection to the M27 is required, involving a new junction and slip roads. Developer partners, to take the lead in house-building and infrastructure works, have not yet been identified. Some of the land is not yet within the control of the current promoters, and the possible need to use compulsory purchase powers has not been ruled out. Although the Council maintains that the scheme will be financially viable, it admits that viability has been identified as a significant issue, and remains under review.
53. In terms of its planning status, although the general location of the development has been identified for many years, the formal allocation and specific site boundaries remain to be confirmed in the Welborne Plan, which is still under examination. No planning permission exists, nor has an application been made. Any application is likely to be subject to an environmental assessment, for which some of the necessary survey work will be limited as to the time of year. Some parts of the site apparently have protected status under European legislation, and a mitigation strategy may need to be agreed with Natural England before an application can be considered. There is no clear evidence as to how much of this work has already been done. I have no reason to doubt that ultimately the hurdles can be overcome, but that does not mean that they can be overcome quickly.
54. I note the Council's suggestion that, if necessary, a first phase of 500 dwellings could be brought forward as a stand-alone scheme, in advance of the new motorway junction and other new facilities. But there is no proper evidence regarding the feasibility of this option, or its effects on the development programme. The Welborne Plan clearly seeks a comprehensive approach, as set out in draft Policy WEL4.
55. The NPPF's test for inclusion in the 5-year supply includes the requirement that sites should have a realistic prospect of delivering houses within that timescale. At the inquiry the appellants' witness accepted that there was a possibility of up to 50 units coming forward within the 5-year period, although no more than that. I do not disagree with that assessment. But a mere possibility is not the same as a realistic prospect.
56. There can be no doubting the amount of work that has already gone into the Welborne scheme, or the commitment of all the parties involved. However, it is equally clear that there is still a long way to go before any houses can start to be built. For a development of this scale, with no planning permission or current application, nor yet even a detailed site allocation, five years is not a long time. From the evidence presented, it seems to me that the Council's development programme for Welborne relies at each stage on the absolute minimum timescales, or less. That approach may have its merits in some other context, but for the purposes of assessing the 5-year supply, it lacks flexibility. For this purpose, it would be more realistic in my view to assume that the development is likely to come forward in a slightly longer timescale, pushing the first completions beyond the 5-year period.

57. I conclude that the Council has failed to show a realistic prospect that development at Welborne is likely to contribute to the 5-year supply. The site therefore cannot be regarded as deliverable at this stage, in terms of the NPPF requirement. This reduces the Council's claimed supply by 500, to a maximum of 1,426 units.

*The supply side: other disputed matters*

58. A number of other sites in the Council's supply, totalling 202 units, are disputed by the appellants. I appreciate that some of these do not yet have planning permission. However, the information that the Council has provided indicates that the sites are likely to come forward within the requisite period. Some are proposed allocations in the draft DSP, which remain to be considered, but I am not aware of any objections to the principle of development on any of these sites. Some of the sites have other issues to be addressed, relating to access, trees and other detailed matters, but there is no suggestion that these are likely to be insoluble. None are so large that they would require more than five years to complete. In all of these cases, there is sufficient evidence to justify treating these sites as deliverable.
59. The Council's supply figures also include a windfall allowance of 100 dwellings across the 5-year period. I accept that this may involve a risk of some overlap with sites that are counted in other categories. But on the other hand, the Council's supply does not count identified sites of less than five units, including those with permission, which total 139 units. The Council suggests that, for the purposes of this appeal, these two figures are close enough to offset each other. In the interests of avoiding unnecessary complexity, I agree.
60. I therefore make no further adjustment to the Council's supply figure in response to the disputed sites or the windfall allowance. But in any event, in the light of the conclusions that I have already reached above, these matters do not affect the final outcome of the land supply calculation.

*Conclusions on housing land supply*

61. From the above, I conclude that the 5-year requirement, based on the best evidence of the OAN, should be 2,074 dwellings. This requirement should not be adjusted to take account of over-delivery prior to April 2014. Against this, the Council's maximum claimed supply is only 1,926 dwellings. The supply must therefore be less than the minimum 5 years required by the NPPF.
62. In addition, the Council's figure over-states the supply, by including 500 units at Welborne, which should not yet be counted as deliverable within the relevant 5-year period. When these are deducted, the realistically deliverable supply becomes 1,426 units. This amounts to only around 3.4 years.
63. Although the DSP and WP are at the examination stage, there is no evidence to suggest that the adoption of those plans in the near future would significantly change the housing supply situation from that considered at this inquiry. All in all, I conclude that a 5-year supply has not been demonstrated.
64. In the light of this finding, NPPF paragraph 49 requires that any relevant policies for the supply of housing be treated as out-of-date. For the purposes of the present appeal, it is not disputed that these include Policy CS14, in so far as the latter provides for settlement boundaries, and seeks to restrict housing development anywhere outside them. Accordingly, although the appeal site is

outside the boundary of Lower Swanwick, the resulting in-principle conflict with Policy CS14 carries relatively little weight.

65. In addition, the lack of a 5-year supply also means that added weight should be given to the benefits of providing housing to meet local needs.

### **Effects on the area's character and appearance**

#### *Effects on the character and appearance of the countryside*

66. In policy terms, the countryside is defined by the FBLP proposals map. On that map, the settlement of Lower Swanwick appears separated from the River Hamble by a continuous swathe of countryside, coloured green, and the appeal site is included in that area. Based on the proposals map, the loss of the appeal site would bring the urban area closer to the river, reducing the remaining countryside at that point to little more than a narrow strip along the water's edge. However, that is an impression conveyed by a map produced for a particular purpose. As its name suggests, the proposals map is concerned with policies and the control of development in the future; it is not necessarily intended to depict what exists now, nor can it be definitive in that respect. And in any event, for the reasons explained earlier, the settlement boundaries currently carry reduced weight, due to the lack of a demonstrated housing supply. For the purposes of this appeal therefore, it seems to me that any assessment of the appeal site's contribution to the countryside cannot usefully be done simply by reference to the FBLP proposals map. Rather, such an assessment should be based on what is seen on the ground.
67. The appeal site comprises an undeveloped grass paddock, currently used for grazing horses. To that extent, it might be arguable that the site has some resemblance to open countryside. However, the site lies at the junction of Lower Swanwick's two main roads, Bridge Road (the A27) and Swanwick Lane, which is effectively the settlement's centre. On its south-eastern and north-eastern sides, the site abuts existing residential areas. Adjacent to Swanwick Lane there is also a children's play area. To the south-west and north-west, fronting the river, is an extensive area of boat yards, workshops, moorings and related development, plus The Navigator pub and its car park. The appeal site is thus surrounded on all sides by urban land uses and built development, and at no point does it abut or connect with any other undeveloped or un-urbanised land. Consequently, notwithstanding its designation as countryside, what is seen on the ground amounts to no more than a relatively small, self-contained patch of vacant land, wholly enveloped within the built-up area.
68. How the site looks in reality is therefore quite different from the impression gained from the proposals map. To a large extent, this difference is explained by the treatment of the boatyards which encircle the appeal site on two sides. On the proposals map these are included in the countryside, thus creating the apparent connection between the appeal site and the river, and thence to the more open countryside beyond. I take no issue with this approach in terms of the policies that this implies for the yards themselves. But in terms of their effect on how the appeal site is perceived, the reality is that the boatyards comprise mainly large-scale, industrial-style buildings and a large expanse of hardstanding. Visually, these appear as an integral part of Lower Swanwick's built-up area. As such, their effect is not to link the appeal site to the river and

countryside, but rather to separate it from those, and to enclose it within the settlement.

69. In addition, the Swanwick Marina site, which includes the greater part of this boatyard area, has planning permission for redevelopment, including a pavilion building of up to 3 storeys, with retail units, bar and restaurant facilities, plus new workshops and offices, and 49 dwellings. The effect of that scheme, it seems to me, can only be to reinforce the urban character of the marina/boatyards area, further consolidating the settlement pattern and the appeal site's sense of containment within the urban area.
70. Similarly, to the north of the appeal site, the settlement boundary excludes some of the residential properties at Green Lane, suggesting a connection between the appeal site and the countryside beyond. However, as I saw on my visit, Green Lane is entirely residential in character, and functionally is fully part of the settlement of Lower Swanwick. Whilst the excluded properties are relatively low-density, a number such as 'Highfield' and 'Genesta' have been extended or replaced, becoming more prominent as a result. Consequently the Green Lane residential area is a highly visible part of the backdrop to the appeal site. Again, I do not mean to question the settlement boundary itself, as far as it relates to the Green Lane area, or the policies to be applied there. But in relation to the appeal site, the presence of residential development along the full length of its north-eastern boundary contributes to the impression of a site encircled by existing development, and reinforces the site's visual containment within the settlement.
71. This impression of containment is increased yet further by the dense woodland belt that runs along the appeal site's north-western boundary, partly within the site itself and partly on adjoining land. Some of the trees in this belt result from the additional planting that was carried out a few years ago. I note the comments made at the inquiry as to the possible motive for that planting, but this has no relevance to the planning merits of the site or the proposed development. To my mind, the tree belt has an attractive, naturalistic appearance, and continues the line which is already established along the top of the river bank further to the north. Its effect is to further reinforce the site's separation from the river, and its association with the built-up area.
72. I note the contents of the 1996 Landscape Character Assessment (LCA)<sup>9</sup>. That report found that the appeal site had 'strong visual links with the river and boat-related activities on the south side of the road'. That may have been so then, and indeed might still be so. But the boat-related activities referred to must presumably have been those in and around the boatyards, and for the reasons already given, my view is that that area has more affinity with the built-up area than the countryside. In any event, I can see nothing in this comment that could be said to endorse the view that the appeal site formed part of the countryside, either then or now. Neither is there any support for that view in the 2012 LCA<sup>10</sup>; indeed that report includes the appeal site in the urban area.
73. There are mid-range and longer views of the site from the A27 river bridge, and the railway bridge, and from Lands End Road on the opposite bank. But from all of these viewpoints, the site is framed by buildings and urban land

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<sup>9</sup> Fareham Borough Landscape Assessment : Scott Wilson Resource Consultants, May 1996

<sup>10</sup> The Hamble Valley Integrated Character Assessment : Hampshire County Council, May 2012

uses on all sides. Indeed, in respect of the view from Lands End Road, the Council made the point more than once at the inquiry, that the appeal site is the only piece of green space or open land that is visible. In addition, in all of these views, the site is partially screened by the tree belt or boatyard buildings. In none of them is the appeal site a main focus or a key element of the view. No other significant public viewpoints have been identified, other than from the roads immediately adjacent to the site itself. In my opinion all of these available viewpoints merely serve to reaffirm my earlier judgement, that the site's setting and context is formed primarily by the built-up area of Lower Swanwick.

74. In these circumstances, I conclude that the appeal site, in its undeveloped state, contributes nothing of any significance to the character or appearance of the countryside. It follows from this that, whatever visual impact the development might have, that impact would not be likely to significantly affect the countryside.

*Effects on the character and appearance of Lower Swanwick - loss of openness*

75. Seen from within Lower Swanwick, the appeal site appears essentially as an open, grassed field, sloping towards the A27. There is an attractive, medium-sized native poplar tree in one corner, at the Swanwick Lane junction, and the woodland belt on the opposite boundary, but there is no suggestion that the proposed development would put these at risk. In all other respects, the site is featureless and unremarkable.
76. If the site were developed as proposed, its present openness would be lost. However, as far as I am aware, the site has never been formally identified as an important open space, or any similar designation based on its townscape value or any contribution to the character or appearance of the settlement. Bearing in mind the other planning considerations discussed above, and especially the urban nature of the location, and the unmet need for housing, in these circumstances the loss of openness on its own is not a compelling objection.
77. Development on the lower part of the site could potentially obstruct views towards the waterfront from Swanwick Lane and the play area. Although the river itself is not visible from here, its presence is signalled by the sight of the many boat masts which extend above the roofs of the boatyard buildings, and I can appreciate why that sight would be missed by residents. But that consideration alone is not overriding. The site is not in a conservation area, nor would the proposed development appear to affect any views into or out of any such areas. The view from Swanwick Lane was not identified as a consideration in the design officer's pre-application comments, or in the planning officer's report, nor in the refusal reasons. Nor was it identified in either of the relevant LCAs. There is also no evidence that this was seen as an issue in the Council's earlier decision on the Swanwick Marina scheme, which seems likely to have a greater impact on the same view. Consequently, I am not convinced that the view from Swanwick Lane is such an important planning consideration as to outweigh the other matters that I have identified.
78. And in any event, the existing views need not be lost altogether, because layout and design are reserved matters. If the Council regards the views from Swanwick Lane as a priority issue, there seems no reason why the height and disposition of the buildings could not be designed to take this into account, by

creating gaps and preserving lines of sight where necessary. The current illustrative layout does not do this, but that plan is not binding, either on the Council or a future developer. Development on the remainder of the site would have little or no impact in terms of views towards the river. Given the size of the site as a whole, and the lack of constraints in most other respects, I see no reason why an acceptable alternative scheme could not be designed which takes account of the relevant viewpoints from within Lower Swanwick.

79. I also note the other points made in support of the retention of some openness at the site's southern corner, to create a landscaped area around the road junction and the poplar tree. I agree that this could well be an attractive approach, and this might be one possible way of producing the urban design focus that the 1996 LCA saw a need for here. But there is no reason why this should be the only way. In any event, for the same reasons as above, an outline permission based on the present application would not prevent this or any other approach from being followed at the reserved matters stage.
80. And furthermore, looking at the site as a whole, it seems to me that at that stage there would be the opportunity to seek to secure a high-quality scheme which could make better use of the land than at present, and which could enhance the urban townscape at this potentially important focal point. In the present outline application there is no guarantee that this opportunity would be realised, but the outcome would be at least partly in the Council's hands.
81. For these reasons, I have come to the view that the loss of the appeal site in its undeveloped state would not have any unacceptable adverse impact on the character or appearance of Lower Swanwick, and indeed could prove beneficial.

*Effects on Lower Swanwick – the quantity of development proposed*

82. Averaged across the site, the proposed development of 37 dwellings would amount to a density of about 32 dwellings per hectare (dph). That is slightly higher than the average within the surrounding residential area, but not unduly so. Nothing in the NPPF or PPG suggests that new development should be required to match that of its surroundings as a matter of course. Rather, the emphasis is on making good use of land, encouraging innovation, and good design, whilst still respecting local character and identity.
83. If development on the lower part of the site were restricted for any of the reasons discussed above, that would tend to increase the density of the remainder of the site, to above 32 dph. At the extreme, if all of the built development were concentrated in the upper area, the density there would be around 47 dph. But that would be offset by a lower density in the lower area; it would not change the overall density of the development as a whole. The existing settlement itself contains a wide range of variation in densities, both above and below what is now proposed; including lower density at Green Lane, but higher in the Swanwick Lane terraces, the Swanwick Quay flats, and the proposed Marina development. There is nothing inherently objectionable about such differences.
84. I accept that the submitted illustrative plan has some shortcomings. I agree that it would be desirable for the development to present an active frontage to the public realm, including Swanwick Lane and the play area, and that issues such as overlooking and relationships to surrounding properties need careful

attention. But all of these are reserved matters, and there is nothing to suggest that they cannot be resolved at the appropriate stage.

85. I note that there is now no dispute that the north-western tree belt could be satisfactorily protected by the relevant provisions contained in the undertaking, together with a buffer zone which could be secured by condition.
86. Having regard for all the evidence before me, I can see no reason why an outline permission for 37 units should not be able to produce a satisfactory detailed scheme which satisfies national and local design policies.

*Other matters relating to effects on character and appearance*

87. Although the appeal site was included in the coastal zone that was identified in the FBLP, that policy has now ceased to have any effect. I note the suggestion that the 'coastline' and 'coastal locations' now referred to in Policy CS14 must be the same as that area, but this does not follow. The areas in question are not defined on any map. Whilst Lower Swanwick might be described as being just within the upper reaches of the river estuary, it is some way from what would normally be considered the coastline. In my view, the area is clearly not the kind of 'undeveloped coast' to which paragraph 114 of the NPPF refers. In any event, for the same reasons as those given above, I do not consider that the development would have any significant adverse effect on the character or appearance of the coastal area, or that of the Hamble estuary.
88. As I have already indicated, I appreciate that the site is valued by local people. However, the NPPF advice on protecting 'valued landscapes', in paragraph 109, is placed in the context of conserving and enhancing the natural environment. In the present case, in view of my conclusions on the above matters, it seems to me that the appeal site does not contribute significantly to the natural environment in any of the ways to which this paragraph is directed. I can therefore find no reasonable basis for applying paragraph 109 here.

*Conclusions regarding the effects on character and appearance*

89. I conclude that the proposed development would have no material adverse effects on the character or appearance of the countryside, or of the settlement of Lower Swanwick. As such, it would not conflict with any of the relevant policies, including FLBP Policy DG4, or FCS Policies CS9, CS14 or CS17.

**Other matters**

*Traffic and safety*

90. I note the concerns raised by local residents, particularly concerning traffic, congestion and highway safety. I saw on my visit that local roads are already busy, especially in the peak periods, and the development now proposed would add more traffic to the network. However, as a percentage of the existing flows, the increase generated by 37 dwellings would be negligible, and the proposed design of the new junction on Swanwick Lane, including the proposed 'keep clear' road markings, would meet all of the Highway Authority's safety requirements. There are therefore no reasonable highway grounds for objection.
91. In addition, the replacement of the existing layby with a new off-street car park would undoubtedly be a safer arrangement for users of the children's play area,

as it would greatly reduce the potential for a small child to wander into the path of a moving vehicle. I appreciate that this might leave some residents looking for alternative overnight parking, but it seems to me that this is outweighed by the safety benefit.

92. A suitable junction design and the early provision of the car park can be secured by conditions.

*Residential amenity*

93. I accept that the proposed development would block views of the river from some neighbouring properties, and I fully understand what this would mean to their owners. However, the loss of private views weighs less heavily as a planning consideration than the other issues that have been identified. There is no reason to doubt that existing occupiers can be adequately protected from more serious impacts such as overlooking, overshadowing or overbearing effects, at the detailed stage. The development therefore need not unacceptably harm living conditions at any existing property.

*Local facilities*

94. I note the comments made about the adequacy of some local facilities. But on my tour of the area, I saw that the site is within reasonably easy reach of schools, doctors, shops and a variety of local employment. Public transport is available by bus and train, at most times of day, and the Highway Authority states that it intends to improve pedestrian and cycle facilities on the A27.
95. I accept that there may be pressures on some local services, especially doctors and schools, but at a time when population numbers are increasing throughout the region, the same is true in many areas, and ultimately the task of adapting to meet future needs is one for the providers of those services. In the present case, this would not be a proper reason to refuse planning permission.

*Wildlife*

96. The various observations relating to wildlife are noted, but the survey evidence shows that the site has limited habitat value. This can be adequately protected and enhanced by condition.

*The legal undertaking*

97. The undertaking provides for a financial contribution of £6,364.00 towards the mitigation of off-site ecological impacts. The need for such a contribution arises because of the development's proximity to designated sites of ecological importance, and the consequent potential cumulative impacts of developments in the area on protected bird species. A framework for such contributions has been agreed between the PUSH authorities under the Solent Disturbance and Mitigation Project, and a specific programme of mitigation works has been identified, focused on the Alver Valley Country Park, in the Borough of Gosport.
98. The undertaking also provides for the setting up of a management company to maintain the development, and for the carrying out of a woodland management plan and other landscaping works, in accordance with details to be approved by the Council.

99. From the information provided, I am satisfied that all of the obligations are necessary, and are properly related to the proposed development, so as to meet the relevant policy and legal tests<sup>11</sup>.
100. I note that a Community Infrastructure Levy (CIL) charging Schedule is in place in the borough, and that the proposed development would also be required to contribute to local infrastructure provision through a CIL payment.

### **Conditions**

101. I have considered the conditions suggested by the Council, and those others discussed at the inquiry, in the light of the tests in NPPF paragraph 206. If permission is granted, I agree that most of these conditions would be needed in one form or another, although with some re-ordering and rewording, to improve their clarity, precision and effectiveness. The conditions that I consider should be imposed on any permission in this case are set out in the attached Schedule.

#### *Conditions to be imposed*

102. Conditions Nos 1 – 3 set out the requirements as to reserved matters and the time limits for submission and commencement. In the light of my earlier conclusions regarding the Borough's housing land supply, I have reduced the time limits to less than the normal statutory periods, to better reflect the urgency of the need. I note the Council's suggested additional wording, but I see no evidence to support a limit of 3 storeys; nor any need for these conditions to refer to the mix of dwelling types.
103. Condition 4 sets out the requirements with regard to affordable housing, which is needed to comply with FCS Policy CS18. I agree that the condition should specify the number of affordable units, and their tenures, but the suggested detailed breakdown as to numbers of bedrooms and floorspaces seems to me over-prescriptive at this outline stage. The suggested contingency provisions relating to right-to-buy, staircasing, mortgagee in possession, and other exceptions, seem to me too imprecise for inclusion in a condition, and I have therefore omitted these.
104. Conditions 5 and 6 set out the requirements for pre-commencement investigations relating to archaeology and contamination. These are necessary to protect the historic environment and the health of future occupiers respectively.
105. Conditions 7 and 8 are aimed at securing the implementation and on-going management of high-quality landscaping, and Nos 9 – 13 provide for the protection of existing trees and hedges. All of these are needed to ensure a good standard of development.
106. Conditions 14 – 20 set out the requirements as to highway works, both off and on-site, and Nos 21 and 22 secure the provision of the proposed play area car park. All of these are necessary in the interests of highway safety and for the convenience of road users. In Condition 22, I have increased the period from 6 to 8 weeks, to ensure that compliance can be achieved.

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<sup>11</sup> In: (i) Regulation 122 of the Community Infrastructure Levy Regulations 2010; and (ii) NPPF paragraph 204

107. Condition 23 requires adequate measures to mitigate noise from road traffic and nearby commercial uses, as defined in the submitted noise report; and Condition 24 seeks the provision of suitable facilities for household refuse. Both are needed to ensure a satisfactory residential environment.
108. Condition 25 calls for ecological mitigation and enhancement, in order to minimise any impacts on biodiversity and secure a net gain in accordance with NPPF paragraph 109. The condition requires further details to be submitted and approved, since the existing ecological report contains limited detail as to any recommended measures.
109. Condition 26 requires compliance with the Code for Sustainable Homes, in accordance with FCS Policy CS15.

*Rejected conditions*

110. Having carefully considered all of the other suggested conditions, I find that none of these meet the relevant tests. The Council's proposed requirement for the development to be carried out only in accordance with the submitted illustrative plan would not be reasonable, because layout is a reserved matter, and in any event there is no evidence to suggest that no other form of layout would be acceptable. Equally, the appellants' tentative suggestion of an exclusion area in the southern corner would not be a reasonable condition, since it has not been shown that there is any overriding objection to development in that part of the site.
111. The proposed conditions relating to materials, car parking and cycle storage are unnecessary, as these details can be dealt with at the reserved matters stage. Lighting is adequately covered in the revised on-site highway works condition that I have included at Condition 20, and thus does not need an additional separate condition.
112. With regard to the proposed construction method statement and controls on the hours of construction work, powers are available to prevent obstruction of the public highway, or the deposit of mud, and to prevent nuisance to adjoining occupiers, under other legislation. There are no particular circumstances here that make it necessary to duplicate those controls through planning conditions.

**CONCLUSIONS**

113. The proposed development of 37 dwellings would be outside the settlement boundary defined in the FBLP, and would thus conflict with FCS Policy CS14. However, given the lack of a demonstrated 5-year housing supply, the settlement boundary must be regarded as out of date, and the weight that can be afforded to Policy CS14 is reduced accordingly.
114. Despite its designation on the FBLP proposals map, the appeal site does not appear in reality as an integral part of the countryside, nor of the coast, and does not contribute significantly to the character or appearance of those areas. Neither does the site, in its undeveloped state, contribute positively to the character or setting of the settlement. Consequently, no material conflicts arise in respect of any of the policies that are concerned with protecting these areas, in either the development plan or the NPPF.

115. The site lies within the Western Wards area, which is identified in Policies CS6 and CS9 as one of the District's preferred locations for housing development. The local infrastructure and services are adequate to serve a development on the scale now proposed.
116. So, on the one hand, the development would result in the loss of an undeveloped, but otherwise unremarkable, parcel of open land. On the other hand, the proposed development would make a valuable contribution to meeting local housing needs, including affordable housing provision. There would also be a modest public benefit in the provision of the proposed car park to serve the existing play area. And in addition there would be the opportunity, at the reserved matters stage, for the Council to seek to secure a high-quality scheme, which could make better use of the land, and enhance the townscape.
117. In view of the unmet housing need, the benefit of adding 37 new dwellings to the local housing supply commands substantial weight. Together with the car park and the potential for townscape enhancement, it seems to me that the conflict with Policy CS14 and any other harm arising from the development would be significantly and demonstrably outweighed by these benefits.
118. Having regard to the three 'dimensions' of sustainable development, and all of the relevant policies contained in the NPPF, I conclude that the development now proposed would constitute the kind of sustainable development that the NPPF seeks to encourage and promote. I have taken into account all the other matters raised, but none alters this conclusion.
119. The appeal is therefore allowed.

*John Felgate*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

The planning permission to which this decision relates is granted subject to the following conditions (numbered 1 - 26):

### *Reserved matters and time limits*

- 1) No development shall be commenced until details of the appearance, landscaping, layout, and scale (hereinafter called "the *reserved matters*") of the proposed development have been submitted to the local planning authority and approved in writing. The development shall be carried out in accordance with the details thus approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
- 3) The development shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.

### *Affordable housing*

- 4) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to the local planning authority and approved in writing. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the NPPF. The scheme shall provide for 15 units of affordable housing, including 10 for 'affordable rented' tenure, and 5 for shared ownership. The affordable housing scheme shall also contain details of:
  - (i) the proposed mix of types and sizes of the affordable housing units, and their location within the site;
  - (ii) the proposed timing of the construction of the affordable units, in relation to the occupancy of the market housing;
  - (iii) the proposed arrangements for the transfer of the affordable housing to an affordable housing provider;
  - (iv) the arrangements to ensure affordability for the initial and subsequent occupiers in perpetuity; and
  - (v) the occupancy criteria and the means by which such criteria are to be enforced.

### *Archaeology*

- 5) No development shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme of investigation which has been submitted to the local planning authority and approved in writing.

### *Contamination*

- 6) No development shall take place until the site has been investigated for soil contamination, and any such contamination found to be present has been removed or rendered harmless, in accordance with a scheme to be submitted to the local planning authority and approved in writing. In addition:
  - (i) If, during the course of construction, any contamination is found which has not been identified previously, no further work shall take place until that contamination has been removed or rendered harmless, in accordance with additional measures to be submitted to and approved in writing by the local planning authority; and
  - (ii) If any contamination has been found to be present at any stage, either before or during construction, no part of the proposed development shall be brought into use until a verification report has been submitted to and approved by the local planning authority, showing that all such contamination has been treated, and the site

rendered safe for occupation, in accordance with the original contamination scheme and any further measures subsequently agreed.

*Landscaping*

- 7) The landscaping details to be approved under Condition 1 shall include details of all planting and seeding, the surfacing of all hard surfaced areas, all boundary treatments, all re-grading or re-contouring of the land, and any signage and street furniture. The landscaping works thus approved shall be implemented in accordance with the approved details, and in accordance with the timescale specified in the submitted legal undertaking.
- 8) The landscaping details to be approved under Condition 1 shall also include a landscape management plan. Following the implementation of the landscaping works, all of the landscaped areas shall be maintained thereafter in accordance with the details thus approved. Any tree or plant forming part of the approved landscaping scheme which dies, or becomes seriously damaged or diseased, or is removed for any reason, within a period of 5 years after planting, shall be replaced during the next planting season with others of similar size and species.

*Existing trees and hedgerows*

- 9) No development shall take place until a tree and hedgerow protection scheme has been submitted to the local planning authority and approved in writing. The scheme shall contain details of proposed measures for the protection and retention of all of the existing trees and hedgerows on and adjacent to the site during construction. The scheme shall also identify a suitably qualified Arboricultural Supervisor.
- 10) The measures to be approved under Condition 9 shall include protective fencing, and such fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought on to the site, and shall remain in place until the latter have been removed from the site and the development has been completed. Nothing shall be stored or placed in any area fenced in accordance with this condition, and the ground levels within these areas shall not be altered, nor shall any excavation be made, except with the written consent of the local planning authority.
- 11) No tree or hedgerow on the site shall at any time be cut down, uprooted or destroyed, nor be topped, lopped or pruned, other than in accordance with details approved within either the tree and hedgerow protection scheme (under Condition 9) or the landscape management plan (under Condition 8). Notwithstanding this requirement, in the event that any existing tree or hedgerow dies or is lost for any reason, within a period of 5 years from the date of completion of the development, replacement planting shall be carried out in accordance with details to be approved in writing by the local planning authority.
- 12) All works approved under Conditions 9 - 11 shall be carried out in accordance with BS 5837:2012, and shall be overseen by the approved Arboricultural Supervisor.
- 13) The layout details to be submitted under Condition 1 shall include provision for a 5m-wide woodland buffer zone alongside the whole length of the tree belt on the site's north-western boundary, as shown on Plan No PP1220-101-00 (Revision. P2). Within this buffer zone, the land shall be used only for communal purposes, including landscaping, open space, and roadways, and no part of the buffer zone shall be included within the curtilage of any dwelling.

*Access and off-site highway works*

- 14) The proposed new access to the site and related off-site highway works shall be laid out in accordance with the submitted details shown on Plan No. A083488\_PR\_01. These works shall include the removal of the existing layby in Swanwick Lane, the

realignment of the footway alongside it, and the provision of visibility splays of 2.4m x 65m in both directions, all as shown on this approved plan.

- 15) In addition, the following off-site works are to be carried out, in accordance with details to be submitted to the local planning authority and approved in writing:
  - (i) the making good of the redundant footway and layby areas; and
  - (ii) the permanent closure of the existing site access to the north of the play area.
- 16) No development (other than that required to comply with this condition) shall be carried out until the existing layby has been closed, and the site access has been constructed to at least binder course level, including the first 10m of the access road.
- 17) No development or works of any kind (including those specified in condition 16), shall be carried out until a timetable for the full completion of all the access and off-site highway works required under Conditions 14 - 16 has been submitted to the local planning authority and approved in writing. These works shall thereafter be carried out and completed in accordance with the timetable thus approved.
- 18) No new dwelling shall be occupied until 'keep clear' road markings have been provided in Swanwick Lane, in accordance with details to be submitted to the local planning authority and approved in writing.
- 19) Once the visibility splays referred to in Condition 14 have been created, clear visibility within the splay areas shall be maintained thereafter, above a height of 600mm from ground level.

*On-site highway works*

- 20) The details to be submitted under Condition 1 above shall include details of all necessary on-site highway infrastructure, including access roads, turning areas, footways, street lighting and highway drainage, together with a timetable for the implementation of these on-site works. No dwelling shall be occupied until the on-site highway infrastructure serving that unit has been provided, in accordance with the approved details, and the relevant roads and footways finished to at least binder course level. These on-site highway works shall thereafter be fully completed in accordance with the approved timetable.

*Play area car park*

- 21) The layout details to be submitted under Condition 1.1 above shall include details of the proposed new car park for the existing play area adjacent to the site. The car park shall provide a minimum of 6 spaces, and shall be laid out in accordance with the details thus approved.
- 22) The proposed car park to be provided under Condition 21 shall be completed and made available for public use in connection with the play area, no later than 8 weeks from the date when the existing layby is closed. Thereafter, the car park shall be retained and kept available for its stated use.

*Noise mitigation*

- 23) No construction work on any new dwelling shall be commenced until a scheme of noise mitigation, including details of the proposed glazing and ventilation systems, has been submitted to the local planning authority and approved in writing. The submitted details shall demonstrate that the new dwellings are designed not to exceed the following maximum internal noise levels:

Daytime average (all habitable rooms):	35 dB $L_{Aeq}$
Night-time average (bedrooms):	30 dB $L_{Aeq}$
Night-time maximum (bedrooms):	45 dB $L_{Amax}$

*Refuse storage*

- 24) The details to be submitted for approval under Condition 1 shall include details of the provision to be made for the storage of household refuse for each proposed dwelling. No dwelling shall be occupied until the approved provision has been made available for use by the occupiers of that dwelling. Thereafter, the approved refuse storage provisions shall be retained in accordance with the details thus approved.

*Ecological mitigation*

- 25) No development shall take place until a detailed scheme of ecological mitigation and enhancement measures has been submitted to the local planning authority and approved in writing. The scheme shall include a timetable for the implementation of the necessary works, and those works shall be carried out in accordance with the scheme and timetable thus approved.

*Code for Sustainable Homes*

- 26) The proposed dwellings shall achieve Level 4 of the Code for Sustainable Homes. No new dwelling shall be occupied until a final Code Certificate has been issued for that dwelling, certifying that Code Level 4 has been achieved.

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Ground, of Counsel      Instructed by the Solicitor to the Council

He called:

Mr Stephen Jupp, BA(Hons) LLM MRTPI	Planning consultant
Mr Peter Home, MA(Oxf) MRTPI	Adams Hendry

### FOR THE APPELLANT:

Mr Christopher Boyle, QC      Instructed by WYG Planning

He called:

Mr Stephen Brown, BSc(Hons) DipTP MRTPI	Woolf Bond Planning
Mr Duncan McInerney, BSc(Hons) MLD CMLI	The Environmental Dimension Partnership
Mr Martin Hawthorne, BSc(Hons) MRTPI	WYG Planning

### OTHER INTERESTED PERSONS:

Cllr Sean Woodward	Leader of Fareham BC and ward member for Sarisbury
Mr Jim Wood	Chairman, Burr ridge & Swanwick Residents' Association
Mr John Grover	Local resident
Mr Clive Nightingale	Local resident
Miss Sarah-Jane Moore	Local resident
Ms Suzanne Rosenbrier	Local resident (also speaking on behalf of Ms Kate Winkworth, local resident)
Mr Don Frost	Local resident

## **DOCUMENTS TABLED AT THE INQUIRY AND AFTERWARDS**

### **TABLED BY THE APPELLANTS**

- 1 Table: housing completions against requirement, 2006-14
- 2 Eastleigh Borough Local Plan examination: Inspector's preliminary report on housing needs and supply, 28 November 2014
- 3 Dartford BC v SoS and Landhold Capital Ltd: judgement dated 24 June 2014 [*2014 EWHC 2636 Admin*]
- 4 Photographs of the appeal site from the railway line
- 5 Photographs of the appeal site from Bridge Road, December 2014
- 6 Swanwick Marina – approved plan
- 7 Secretary of State's appeal decision – Droitwich Spa (APP/H1840/A/13/2199085)
- 8 Secretary of State's appeal decision – Ramsgate (APP/Z2260/A/14/2213265)
- 9 Appeal decision – Swanley (APP/G2245/A/13/2197478)
- 10 Bus timetables
- 11 Train timetables: Bursleden - Southampton
- 12 Train timetables: Bursleden - Portsmouth
- 13 Welborne strategic framework plan, annotated by Mr Hawthorne to show land not controlled by the promoters
- 14 Correspondence relating to screening direction for Welborne development
- 15 Executed unilateral undertaking, dated 9 December 2014
- 16 Appellants' suggested wording for a condition restricting development on part of the site, and related plans
- 17 Mr Boyle's closing submissions
- 17A Email dated 23 December 2014 in response to the Ministerial letter re SHMAs

### **TABLED BY THE COUNCIL**

- 18 Appeal decision – Storrington (APP/Z3825/A/13/2202943)
- 19 Appeal decision – Emsworth (APP/L3815/A/13/2198341)
- 20 Emails relating to various housing supply sites
- 21 Welborne – planning programme chart
- 22 The Solent Disturbance Mitigation Project Interim Framework – report to PUSH Joint Committee, 25 March 2014, and minutes
- 23 Mr Home's summary statement
- 24 Inspector's decision re land at Blaby (S62A/2014/0001)
- 25 Swanwick Marina – planning permission and officers' report
- 26 S Northants v SoS and Barwood Homes Ltd: judgement dated 10 March 2014 [*2014 EWHC 570 Admin*]
- 27 Mr Ground's closing submissions
- 27A Email dated 22 December 2014 relating to the Ministerial letter re SHMAs

### **TABLED BY THE OTHER PARTICIPANTS**

- 28 Cllr Woodward's statement
- 29 Mr Wood's statement
- 30 Mr Grover's statement
- 31 Mr Nightingale's statement
- 32 Miss Moore's statement
- 33 Ms Winkworth's written submission (presented by Ms Rosenbrier)
- 34 Aerial photograph dated 2013, tabled by Mr Grover

### **OTHER TABLED DOCUMENTS**

- 35 Statement of Common Ground on 5-year housing land supply
- 36 Extracts from Core Strategy 'interactive' proposals map
- 37 Proposed condition re affordable housing (tabled jointly)
- 38 Letter from the Minister of State for Housing and Planning, dated 19 December 2014, re Strategic Housing Market Assessments



## Appeal Decision

Inquiry held on 25 April 2017

Site visit made on 27 April 2017

by **S R G Baird BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 14 August 2017**

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**Appeal Ref: APP/A1720/W/16/3156344**

**Land north of Cranleigh Road and west of Wicor Primary School,  
Portchester, Fareham, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Persimmon Homes South Coast against the decision of Fareham Borough Council.
  - The application Ref P/15/0260/OA, dated 17 March 2015, was refused by notice dated 24 March 2016.
  - The development proposed is residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping on land north of Cranleigh Road and west of Wicor Primary School, Portchester, Fareham, Hampshire in accordance with the terms of the application, Ref P/15/0260/OA, dated 17 March 2015, subject to the conditions contained at Annex A of this decision.

### Preliminary Matters

2. The application was made in outline with all matters other than means of access reserved. The appellant and the local planning authority (lpa) confirmed that the drawings that comprise the planning application are Drawing Nos. LOC 1 Rev D – Location Plan and J-D1708.00 - Site Access Layout and Highway Improvements. The application plans are supported by 2 Illustrative Plans; Drawing Nos. 01 Rev W- Illustrative Site Plan and 2498-SK-04 Rev P3 – Indicative Landscape Strategy.
  3. The appellant has submitted a signed S106 Unilateral Undertaking (UU) providing for financial contributions towards: (a) mitigation in accordance with the Interim Solent Recreation Mitigation Partnership and (b) the approval and monitoring of a Travel Plan. In addition, the UU provides for the laying out of the public open space and that 40% of the dwellings would be affordable housing units.
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4. An application for an award of costs was made by Persimmon Homes South Coast against Fareham Borough Council. This application is the subject of a separate Decision.
5. Following the close of the inquiry, the Supreme Court issued a judgement<sup>1</sup> concerning the interpretation of paragraph 49 of the National Planning Policy Framework (Framework) and its relationship with Framework paragraph 14. The parties were given an opportunity to comment on the implications of this judgement for their cases. I have taken the judgement and the parties' comments into account in coming to my decision.

### **Main Issues**

6. These are:
  - (i.) whether the lpa can demonstrate a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land supply (HLS);
  - (ii.) the effect on the supply of Best and Most Versatile (B&MV) agricultural land; and
  - (iii.) the effect on the character and appearance of the area.

### **Reasons**

7. The development plan for the area includes the Core Strategy (CS) adopted in August 2011, the Local Plan Part 2: Development Sites and Policies adopted in June 2015 (LP2) and the Local Plan Part 3: The Welbourne Plan adopted in June 2015 (LP3). The lpa has commenced a Local Plan Review (LPR). It is anticipated that a draft Local Plan will be published for consultation in September 2017.

#### Issue 1 - Housing Land Supply

8. Framework paragraph 47 seeks to boost significantly the supply of housing. Lpas are enjoined to ensure that Local Plans meet the full, objectively assessed needs (OAN) for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. Lpas are to identify and update annually a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land against their housing requirements with an additional buffer of 5% or 20% where there has been a record of persistent under delivery of housing.
9. Here, the lpa's 5-year HLS calculation is based on the requirements of the CS, in particular Policy CS2, adopted in 2011. The CS has a plan period running from 2006 to 2026 and was produced in the context of the no longer extant regional strategy (The South-East Plan) and the then emerging South Hampshire Strategy (SHS), a non-statutory sub-regional plan produced by a consortium of several lpas.
10. Given the CS was adopted several months before the publication of the Framework and the CS housing requirement is largely based on the regional

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<sup>1</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).

strategy it is not a Framework compliant OAN. Although LPs 2 and 3 post-date the Framework, neither plan undertakes the identification of an OAN.

11. Given the above, and in light of the Navigator appeal decision<sup>2</sup>, the appellant submits that the starting point for calculating the HLS position should be based on the April 2016 Objectively Assessed Housing Need Update produced for the PUSH<sup>3</sup> authorities and the June 2016 PUSH Spatial Position Update. Both studies identify an OAN for Fareham that is materially higher than the CS housing requirement. The Ipa's position is that as LPs 2 and 3 have been found sound, and in light of PPG and Ministerial guidance on the use of SHMAs the housing requirement used to calculate the HLS is that contained in the CS. The Ipa's position is that until the LPR has been the subject of consultation, examination and adoption it is premature to use the PUSH OAN as the Borough's housing requirement.
12. PPG<sup>4</sup> advises that housing requirement figures in an up-to-date, adopted LP should be used as the starting point for calculating the 5-year HLS. PPG advises that considerable weight should be attached to the housing requirement figures in adopted LPs, which have successfully passed through the examination process, unless significant new evidence comes to light. However, PPG notes that evidence that dates back several years, such as that drawn from revoked regional strategies may not adequately reflect current needs. Thus, where evidence in a LP has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs i.e. SHMAs should be considered. That said the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints.
13. In December 2014, in a Ministerial letter, the Government clarified the policy position on emerging evidence in the form of SHMAs. The letter notes that the publication of a locally agreed assessment provides important new evidence and where appropriate will promote a revision of housing requirements in LPs. Lpas are expected to actively consider the new evidence over time and, where over a reasonable period they do not, Inspectors could reasonably question the approach to HLS. The Minister goes on to note that the outcome of a SHMA is untested and should not automatically be seen as a proxy for a final housing requirement in LPs or that it does not immediately or, in itself, invalidate housing numbers in an existing LP.
14. Here, the CS housing requirement is largely based on the no longer extant South East Plan, whose evidence base dates back to at least 2000. It is accepted that the CS does not contain a Framework compliant assessment of OAN and neither LPs 2 or 3 purport to set a housing requirement based on an OAN. The 2014 Ministerial guidance, in my view, restates the advice contained in the PPG and does not, in itself, preclude using up-to date SHMA information to assess the 5-year HLS.
15. The latest assessment of the "Policy-Off" OAN is contained in the April and June 2016 PUSH reports. These documents, as the introduction to the April

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<sup>2</sup> APP/A1720/A/14/2220031.

<sup>3</sup> Partnership for Urban South Hampshire.

<sup>4</sup> Paragraph 030 Ref ID: 3-030-20140306.

2016 report says, provide an analysis of housing need, which for Fareham is 420 dpa and 450 dpa respectively. These are substantial bodies of work that have been carried out in accordance with PPG guidance and at least one lpa has adopted the PUSH OAN calculated for its area as the basis for calculating the 5-year HLS. Here, the lpa acknowledges that the PUSH April 2016 OAN is the best evidence on the OAN for Fareham. I have taken careful note of the Minister's reference to lpa's considering the evidence over time and the reference to a reasonable period. Whilst the 2 reports are relatively recent, the lpa was aware during the Navigator appeal in December 2014 that the OAN identified in the 2014 South Hampshire SHMA was materially higher than the CS requirement. The decision in the Navigator appeal, which was not challenged, was predicated on an acceptance that the 2014 OAN provided a more suitable basis for a 5-year HLS calculation. In my experience it is rare in the extreme to conclude that the "Policy-Off" OAN is likely to reduce and it is clear from the April and June PUSH OAN reports that it continues to rise materially.

16. In line with PPG advice, it is, in my view, reasonable to conclude that the CS/LP 2 housing requirement is materially out-of-date and is derived on a basis that is inconsistent with the Framework. Thus, having regard to the case law<sup>5</sup> referred to, PPG and Framework policy, I consider that the 5-year HLS supply should be assessed on the basis of the PUSH April 2016 OAN.
17. Before dealing with the assessment of the 5-year HLS position, it is appropriate to deal with the matter of whether a 5 or 20% buffer should be added to the housing requirement. The lpa add a buffer to the housing requirement set out in the CS and LP 2, but not to the contribution to be made by the major urban extension at Welbourne (LP 3). The exclusion of Welbourne is predicated on the basis that it is a site specific allocation implementing a large-scale development proposal in the CS. I am not aware that there is support for such an approach either in the Framework or PPG and read on its face the Framework suggests that the buffer should be applied to the requirement as a whole. Accordingly, I consider the buffer figure should be applied to the requirement as a whole.
18. PPG<sup>6</sup> advises that the approach to identifying a record of persistent under delivery inevitably involves questions of judgement in order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing. The guidance indicates that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle. Here, I have details of net completions for the years 2006/07 to 2015/16 and these figures are not disputed by the lpa. For the period 2006/07 to 2010/11 the CS Policy CS2 requirement is applied and from then until 2015/16 the appellant applies the OAN figure taken from the PUSH April 2016 assessment of OAN. This is on the basis that the PUSH OAN figure is calculated from 2011. On this basis, completions only exceed the housing requirement in 2 out of the last 10 years. However, in the period up until 2014 when the then PUSH SHMA identified an OAN of 395 dpa the lpa could not have been expected to meet a

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<sup>5</sup> City and District of St Albans and The Queen (on the application of) Hunston Properties Limited Secretary of State for Communities and Local Government and anr [2103] EWCA Civ 1610 & Gallagher Homes Limited Lioncourt Homes Limited and Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin).

<sup>6</sup> Paragraph 035 Ref ID: 3-035-20140306.

need that it was not aware of. On this basis, allowing for peaks and troughs in the housing market it appears to me that there has been significant under-delivery in only 3 out of the last 10 years. On this basis, the application of a 20% buffer is not, in my view, justified.

19. Turning now to the 5-year HLS, I have considered 2 scenarios. One based on the requirements of CS Policy CS2, the lpa's preferred scenario, and one based on the up-to-date OAN figure. On the CS based approach, the 5-year housing land requirement is some 1,932 dwellings and the lpa claim a deliverable supply of some 2,003 dwellings, a surplus of some 71 units giving a 5.18-years' supply of housing land<sup>7</sup>. However, taking into account my conclusion on the appropriateness of excluding Welbourne from the buffer figure including it within the 5% allowance on the whole of the requirement would still return a HLS marginally above 5-years. The surplus would be reduced to some 13 units; a figure the lpa does not dispute.
20. The appellant disputes the deliverability of 9 of the LP 2 allocations, the deliverability of the brownfield site at Warsash Maritime Academy and the ability of the Welbourne allocation to deliver some 425 dwellings in years 4 and 5 of the HLS calculation. Using the lpa's CS housing requirement figure, the appellant's calculation gives a shortfall of some 1,965 units and estimates a 3.28-years' supply of housing land.
21. In coming to my conclusions on the deliverability of the disputed LP 2 sites, I have taken careful note of the lpa's submissions that the allocated sites were found "sound" by the Inspector when he examined LP 2 and that the sites continue to be listed in the Annual Monitoring Report (AMR). That said, LP 2 was examined in late 2014 based on a draft plan submitted for examination in mid-2014 and no doubt based on evidence obtained during 2013. The November 2016 AMR, other than containing a list, provides no detailed assessment of the sites. These assessments are, in my view, snapshots in time, which in the case of LP 2 were undertaken between 3 and 4 years ago. The deliverability of these sites needs to be kept under robust review and, given the paucity of information contained in the AMR, the value of these in making an up-to-date assessment of the HLS is limited.
22. To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable<sup>8</sup>. PPG<sup>9</sup> indicates that the 5-year HLS must be underpinned by "...robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out."
23. At the inquiry, the lpa provided an updated assessment of the deliverability of the disputed sites. However, the information provided on each site was limited and indeed the lpa's witness acknowledged that he did not have detailed information on the sites. The appellant's submission that the lpa's evidence regarding deliverability was based on, "...discussions with others about discussions with others" is an apt description. In my view, the lpa's evidence on deliverability relating to the LP 2 sites falls well below the

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<sup>7</sup> Table AB 1 submitted by the lpa at the inquiry.

<sup>8</sup> Footnote 11, National Planning Policy Framework.

<sup>9</sup> Paragraph 030 Ref. ID: 3-03020140306.

threshold set by PPG in that it is neither robust nor clearly and transparently set out. I have similar concerns regarding the inclusion within the 5-year supply of 100 units at Warsash Maritime Academy. Although this is a substantial site, the level of detail provided by the lpa on its deliverability is thin and lacks clarity and transparency.

24. LP 3 allocates some 371ha of mainly greenfield land at Welbourne to deliver some 6,000 dwellings and the lpa includes some 425 units within the 5-year supply in years 4 and 5. The delivery of Welbourne is a major undertaking and already the delivery of units has been pushed back in the programme. At one time the lpa considered that the delivery of dwellings would commence in 2016 with 120 units being completed by the end of the first quarter in 2017. Whilst I accept that significant pre-planning work has been carried out, a delivery partner will not be appointed until the beginning of 2018, major planning applications will have to be prepared and already, albeit as a precaution, the lpa is contemplating the use of compulsory purchase powers. Whilst I acknowledge the lpa's commitment to the delivery of Welbourne, on the evidence before me, it would appear that the potential to deliver a significant number of units towards the end of the 5-year period is optimistic.
25. In light of these findings, I am unable to safely conclude that at least 315 units, comprising the disputed list of LP 2 sites and the brownfield site at Warsash Maritime Academy, are capable of being considered as deliverable within the 5-year period. In this context, the lpa cannot demonstrate a 5-year supply of deliverable housing land.
26. In the scenario where the up-to-date OAN is used to derive the 5-year housing requirement and using the lpa's supply figures the lpa accepts that it could not demonstrate a 5-year HLS. At most, the evidence indicates that there would be a supply of some 3.6 years. However, given my conclusions regarding the deliverability of the disputed sites, I consider the HLS would be marginally over 2 years.
27. Drawing all of the above together, on whatever approach is used to identifying the 5-year housing land requirement, the lpa cannot demonstrate a 5-year supply of deliverable housing land. Indeed, on the balance of probabilities the available supply is well below the 5-year threshold.

#### Issue 2 – Best & Most Versatile Agricultural Land

28. The majority of the site is Grade 1 and the remainder Grade 2 agricultural land and is classed as best and most versatile land<sup>10</sup> (B&MV). CS Policy CS16 seeks to prevent the loss of B&MV. The Framework does not place a bar on the development of B&MV agricultural land. Framework paragraph 112 identifies that where development would involve the use of B&MV land, the economic and other benefits of that land should be taken into account and goes on to say where significant development is demonstrated to be necessary the use of poorer quality land should be used in preference to that of a higher quality i.e. apply a sequential approach. Here, given the appeal site extends to some 5.5ha, this proposal is not, in my view, a significant development where the sequential approach is engaged.

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<sup>10</sup> Annex 2, National Planning Policy Framework.

29. CS Policy CS16 was predicated on guidance contained in PPS7<sup>11</sup>, which the Secretary of State in his 2006 decision<sup>12</sup> described as containing a strong presumption against the loss of land of high agricultural value. PPS7 is no longer extant and CS Policy CS16, given that it says in a straightforward manner that it will prevent the loss of B&MV agricultural land without an opportunity to balance potential harm against potential benefits, is, in my view, inconsistent with the Framework and subject to the guidance contained at Framework paragraph 215.
30. The development would result in the permanent loss of B&MV agricultural land and as such would conflict with the provisions of CS Policy CS16. Accordingly, it must feature on the negative side of the planning balance, albeit the scale of the permanent loss would be limited.

#### Issue 3 – Character & Appearance

31. The appeal site abuts but lies outside the defined settlement boundary of Portchester. Whilst the development plan treats the area as countryside it is not subject to any landscape designation. Relevant development plan policies are CS Policies CS14 and 17 and LP 2 Policy DSP6. Policy CS14 indicates that development outside the defined settlement boundary will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Policy CS 17 seeks high quality design and layout and development should respond positively to and be respectful of key characteristics of the area including landscape. Except for certain categories of development, which do not apply in this case, LP 2 Policy DSP6 has a presumption against new residential development outside the defined settlement boundary. As such the proposal would be in conflict with LP 2 Policy DSP6.
32. Core Principles of the Framework seek to: ensure that planning secures high quality design ensuring that account is had to the different roles and characters of different areas recognising the intrinsic character and beauty of the countryside and a contribution to the conservation and enhancement of the natural environment. Framework paragraph 109 reiterates that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.
33. Both parties referred to various landscape character assessments. Of these the Fareham Borough Landscape Assessment examines the finest grain and is, in my view, the most relevant. In terms of landscape character, the appeal site sits on the eastern edge of Local Landscape Character Area (LCA) 12–Cams Wicor Coastal Fringe and to the south and east of LCAs 36 and 38 Urban Areas of Downend and Portchester South. LCA 12 is described as a discrete parcel of open landscape contained by the coast and the urban fringe. Whilst the main feature of this LCA is the extensive parkland and woodland of the Cam Hall Estate on its western edge the description notes that the LCA includes areas of open amenity landscape, fringe pasture and coastal industry to the east. The essential characteristics of the area are: an area of flat or gently undulating land occupied by mixed but open landscapes; a strong coastal influence and a strong fringe character with

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<sup>11</sup> Planning Policy Statement 7: Sustainable Development in Rural Areas.

<sup>12</sup> APP/A1720/A/05/1176455.

valuable areas of open space with attractive views out across Portsmouth Harbour and to Portsdown Hill and the Cams Hall Estate. The enhancement priorities for the area are to: maintain the open unbuilt character, particularly the estuary and coastal margins and improve the landscape quality of areas which lie between the settlement boundaries and the coast.

34. In terms of landscape and visual impact, whilst the appellant and the lpa use different terminology, in my view they both result in broadly the same outcome. Both parties agree that there would be substantial and adverse landscape and visual impacts. What is in dispute is the spatial extent over which these adverse effects would be experienced and whether the appeal site should be classed as a "valued" landscape.
35. In terms of visual impact, I had the opportunity to extensively walk the roads immediately around the site and the publicly accessible areas to the west. In addition, I visited Portsdown Hill and was able to assess the impact of the development from publically accessible vantage points.
36. Within the immediate area of the site from Cranleigh Road along its southern boundary and from Cranleigh Road southwards towards the junction with Gatehouse Road, the visual impact of the development to be at its highest, i.e. substantial and adverse. Further to the west along Cranleigh Road and from vantage points on the public footpaths and open space to the west, parts of the development, mainly the upper storeys and roof planes would be visible. However, the visual impact of the development would be significantly reduced by the degree of separation and the presence of existing tree/hedge planting and new boundary planting that could be conditioned as part of any permission. The magnitude of this impact would range from moderate to minor adverse depending on distance from the site.
37. Given there is no public access to the site and given the extent of intervening planting and industrial development on the foreshore there would be no material impact on views out over Portsmouth Harbour. In this context, the development would only have a limited adverse impact on views towards Portsdown Hill. The development would be in the foreground of the built-up area to the north and east and would not obscure publically available views of the hill from the east.
38. From public vantage points on Portsdown Hill there are sweeping panoramic views across Portchester and Portsmouth Harbour. Whilst the development would be noticeable, it would be seen as a modest extension of the existing built-up development to the north and east and against the backdrop of the housing area to the south of Cranleigh Road and mature planting beyond. The visual impact of the development would be mitigated by the above factors and the degree of separation from Portsdown Hill. Views of Portsmouth Harbour would not be interrupted or obscured and the wide sweep of the panoramic views would be maintained. In this context, the visual impact of the development from these vantage points would be minor.
39. Turning to whether the appeal site should be identified as a "valued" landscape and in the context of Framework paragraph 109 one whose enhanced planning status should be taken account of in the balancing exercise. I have taken careful note of the submissions made by interested persons and I was left in no doubt about their views on value. All landscapes are valued by someone at some time, particularly countryside

that is threatened by development. However, that does not necessarily make it a valued landscape for the purposes of Framework paragraph 49.

40. Although the Framework refers to valued landscapes it does not provide a definition of what type of landscape that might be. Framework paragraph 109 starts by reiterating the wider objective of enhancing the natural environment, which I take to mean the countryside in general and then it goes on to refer to valued landscapes, which must mean something more than just countryside in general. Case law<sup>13</sup> and Inspectors' decisions have identified that "valued" means something more than popular, such that a landscape was "valued" if it had physical attributes which took it out of the ordinary. In addition, the Guidelines for Landscape and Visual Impact Assessment (GLVIA3), provides at Box 5.1 a range of factors that can help in the identification of valued landscapes. These include landscape quality/condition; scenic quality; rarity, representativeness; conservation interests recreation value; perceptual aspects and associations. Whilst some of the factors go beyond the threshold identified by case law the Box 5.1 headings provide a useful context within which to assess "value". However, this is not a technical process and relies on subjective, albeit informed professional, judgement/experience.
41. Given the urbanising influence of built development on the northern eastern and southern boundaries and the generally overgrown nature of the site, I consider the landscape quality/condition of the site to be low/medium. For similar reasons, the site displays limited aesthetic appeal and it has low scenic value. Rarity and representativeness can be dealt with together. This is a landscape that does not contain rare landscape types or features. As such in terms of rarity and representativeness, I consider the value of the site/landscape to be low.
42. Given that the site has been neglected for some considerable time, the presence of the badger sett and the submissions regarding its ecology, it attracts a medium value for its conservation interest. There is no public access to the land other than it being a piece of a larger area of open land and has low recreational value and a medium value in terms of perceptual aspects. As far as I am aware the site /landscape has no cultural associations and as such attracts a low value. Reiterating again that this is not a technical exercise, drawing the Box 5.1 factors together, I consider the nature and value of the landscape of the appeal site to be ordinary/low. Combining this "score" with the case law requirement that the landscape should display physical attributes that takes it out of the ordinary, I conclude, that when looked at in the round the appeal site is not a Framework paragraph 109 valued landscape and does not benefit from the enhanced planning status that such an attribution would bring to the balancing exercise.
43. On this issue, the development would have a highly localised substantial and adverse impact on landscape character and visual impact. However, this impact would reduce with distance and for the most part in the wider area the landscape character and visual impact of the development would be

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<sup>13</sup> Stroud District Council v Secretary of State for Communities and Local Government [2015] EWHC 488 (Admin) & Cheshire East Borough Council v Secretary of State for communities and Local Government [2016] EWHC 694 (Admin).

minor moderate. That said the landscape and visual harm resulting from the development would conflict with CS Policies 14 and 17 and LP 2 Policy DSP6.

### **Other Considerations**

#### Highways

44. I understand the concerns raised by residents particularly regarding the impact of traffic on congestion on the wider network and on Hatherley Crescent/Cornaway Lane at school dropping off/pick-up times. The planning application was accompanied by a robust Transport Assessment (TA) the scope of which was agreed with Hampshire County Council (HCC) as the Highway Authority (HA). In light of this study and its findings, the HA and the Ipa, subject to the imposition of appropriate planning conditions, have no objection to the proposal on highway safety or traffic generation grounds. I have no reason to disagree with those conclusions.
45. In terms of the impact on the wider area, the TA concludes that the capacity of junctions within the study area would not be significantly impacted upon and that the estimated marginal increases in queue lengths would not significantly impact on the operation of the highway network. Congestion occurring at school drop off and pick-up times is restricted to short periods of the day and occurs only on weekdays during term time. Given the location of the site directly abutting the school, the development would be unlikely to generate additional vehicular traffic to and from the school. In my experience, additional traffic generated by the development would only likely to have an impact during the short morning drop-off window. These impacts are not a reason to withhold permission.

#### Ecology

46. The site is located some 350m from the Portsmouth Harbour Site of Special Scientific Interest (SSSI) which forms part of the wider Portsmouth Harbour Special Protection Area (SPA) and Ramsar Site. The appellant submitted ecological appraisals and produced an Ecological Construction and Management Plan. Given the proximity of the site to the national and internally designated sites referred to above, there is potential for the development to affect the interest features for which they were designated.
47. The appellant submitted to the Ipa a Habitat Regulations Assessment (HRA), which has been assessed by Natural England (NE). Based on what I consider to be a robust study, the HRA concludes that, having regard to measures that could be built-into the scheme and a financial contribution to the Solent Recreation and Mitigation Partnership, significant effects are unlikely to occur either alone or in combination on the interest features of the SPA and Ramsar. In light of these finding, and similar to the conclusion reached by NE, I conclude that an appropriate assessment under the regulations<sup>14</sup> is not required. Similarly, subject to the development being carried out in accordance with the details submitted with the application, NE indicates that the development would not damage or destroy the interest features for which the Portsmouth Harbour SSSI has been notified. Again, I have no reason to disagree with that conclusion.

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<sup>14</sup> The Conservation of Habitats and Species Regulations 2010 (As Amended).

48. There is an active badger sett within the site, which the appellant proposes to relocate within the area of public open space to the west. Badgers and their setts are protected by legislation<sup>15</sup>. Whilst the lpa has no objection to the relocation, the developer would require a separate licence from NE to remove the badgers. Whilst I note the concerns raised regarding the efficacy of artificial badger setts, they are, in my experience, in common usage and successful. I have no reason in this case to conclude there would be unacceptable harm or loss.
49. From the representations made both orally and in writing, I am in no doubt that the appeal site is highly regarded by local residents and the adjacent primary school as an ecological resource. The school's activities in introducing its pupils to the natural world are substantial and nationally recognised. Although the appeal site is privately owned and there is no public access to it, I recognise that the school views the site as a resource and an indirect source for the wildlife that inhabits the school site. Clearly whilst there would be some loss of habitat, this relates to many species that are common and widespread. The proposed area of public open space albeit it would be divorced from the school grounds by a housing estate, would be publicly available and could be laid out and managed as an improved ecological resource. Moreover, the tending and maturing of private gardens does provide a range of diverse habitats for a wide range of species. Whilst not a direct replacement the variety of habitats provided by private gardens would mitigate any impact on local ecology.
50. Drawing all of the above together, I conclude that the proposed development would not have a materially unacceptable effect on local ecology.

#### Education and Health

51. The development would generate a demand for 31 primary school places and 22 secondary school places. Research by the appellant identifies that the 5 infant/junior schools in Portchester are full. The Northern Infant school has recently been expanded and the Northern Junior School has a proposal to expand in 2019. HCC as the local education authority (LEA) indicates that the local secondary school has spaces available to meet the needs of the development. Whilst there is pressure on local primary schools, the appellant's submission that some of the existing school places are taken up by pupils from out of the school planning area, which could be used by local children, is not disputed by the lpa. There is no objection from the lpa or LEA on the grounds that the proposal would result in unacceptable pressure on local education infrastructure. I have no reason to disagree.
52. Evidence submitted by the appellant indicates that all primary healthcare centres within some 2 miles of the site are currently accepting patients. Whilst there were submissions that appointments are not easy to obtain, this is not a local problem and is something that occurs nationwide. There is no objection from the local providing body for primary care or the lpa.

#### Benefits

53. The proposed development would deliver economic, social and environmental benefits. Chief amongst these are that the proposal would

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<sup>15</sup> Protection of Badgers Act 1992.

deliver up to 120 homes including up to 48 affordable units. Economic benefits that would flow from the application include those arising from employment during the development phase; a New Homes Bonus payment and increased Council Tax revenues. When undertaking the planning balance factors such as these are generally held to be benefits of development albeit they are benefits that would occur from most developments.

#### S106 Undertaking

54. Framework paragraph 204 and CIL Regulation 122 say that Planning Obligations should only be sought and weight attached to their provisions where they meet all of the following tests. These are: they are necessary to make the development acceptable in planning terms; they are directly related to the development; and they are fairly and reasonably related in scale and kind to the development.
55. NE's lack of objection to the development is based on the developer making a contribution to the implementation of the Solent Recreation Mitigation Scheme. The purpose of the contribution is to mitigate disturbance of the Portsmouth Harbour SSSI and the wider Portsmouth Harbour Special SPA and Ramsar Site. The UU provides a mechanism for the provision of affordable housing required by development plan policy and the provision and retention of the public open space. These obligations are necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, in this respect, the UU is consistent with the guidance at Framework paragraph 204 and Regulations 122 of the CIL Regulations and where appropriate, I have attached weight to them in coming to my conclusion
56. The UU provides for (i) the submission of a Full Travel Plan; (ii) the payment of £5,750 to Hampshire County Council made up of £750 towards the cost of approving a Full Travel Plan and £5,000 to monitor compliance with it; (iii) the appointment of a Travel Plan Coordinator and (iv) a Travel Plan Bond.
57. The submission of a Travel Plan is a matter that could be dealt with by the imposition of an appropriate condition. Here, the only explanation I have for the monitoring fees is that *"it has been assessed based on the highway authority's experience with regards to monitoring such developments and is justified to ensure that the modal targets within the Travel Plan area achieved and if not there are "punitive" measures within the travel plan that can be instigated to endeavour to achieve the desired modal targets. The monitoring process ensures this check."*
58. The test contained within the Framework and CIL Regulation 122 i.e. "necessary to make the development acceptable in planning terms" is a high threshold in that the obligation has to be necessary and not merely desirable. Moreover, there is nothing in the Planning Acts, the CIL Regulations, the Framework or PPG that suggest that an authority could or should claim monitoring fees as part of a planning obligation. The monitoring of the Travel Plan is, in my view, one of the functions of the County Council. Despite my request for supporting evidence, I conclude that

in the absence of a full justification supported by evidence<sup>16</sup> the payment of a monitoring fee and the provision of a Travel Plan Bond are unnecessary to make the development acceptable in planning terms nor am I in a position to conclude that the requested contribution and Bond are fair and reasonably related in scale and kind to the development. For these reasons, I consider the requested contribution does not accord with the tests set out in the Framework and CIL Regulation 122 and I have not taken it into account in coming to my decision.

### **The Planning Balance**

59. The starting point is that S38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 requires that decisions on applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
60. The site is located outside the settlement boundary of Portchester and does not fall within any of the categories of development that may be permitted by LP Policy DSP6; as such the proposal is in conflict with this policy. Both parties refer to CS Policy CS11, which refers to development within the settlement boundaries of Portchester being permitted. Given the specific nature of this policy and the location of the site outside the settlement boundary, I consider this policy is not relevant to the overall planning balance. I have concluded that the proposed development would have an adverse impact on landscape character and a substantial adverse visual amenity albeit that impact would be highly localised. As such the proposal would be in conflict with CS Policies CS14 and CS17. The proposal would result in the loss of B&MV and would be in conflict with CS Policy CS16.
61. Paragraph 2 of the Framework confirms that it is a material consideration in planning decisions. The fourth bullet point of Framework paragraph 14 has 2 limbs. The first limb indicates that where the development plan is absent, silent or relevant policies are out-of-date planning permission should be granted unless 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. The second limb indicates that development proposals should be granted unless or specific policies in the Framework indicate development should be restricted. Framework paragraph 49 says that relevant policies for the supply of housing should not be considered up-to-date, if the lpa cannot show a 5-year supply of deliverable housing sites. Framework paragraph 215 indicates that due weight should be given to relevant policies in existing plans according to their consistency with the Framework.
62. In relation to housing land supply, the lpa cannot demonstrate a 5-year supply of deliverable housing sites. In this context, the decision of the Supreme Court<sup>17</sup> indicates that such a shortfall triggers the fourth bullet point of Framework paragraph 14. In this case, based on the evidence before me it is only the first limb of the fourth bullet point that is engaged.

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<sup>16</sup> Planning Policy Guidance, Paragraph: 004 Reference ID: 23b-004-20150326.

<sup>17</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin) .

The appellant and the lpa agree that CS Policy CS14 and LP 2 Policy DSP6 are not relevant policies for the supply of housing and I have no reason to disagree. Given, the nature of CS Policy CS 17 – first bullet point, I consider this is not a relevant policy for the supply of housing either.

63. Based on the evidence before me the housing land supply stands at just over 2-years resulting in a significant shortfall. I acknowledge that the lpa is seeking to address its ongoing housing requirements through the preparation of the Local Plan Review and the promotion of the sustainable Urban Extension at Welbourne. That said, a consultation draft of the Local Plan Review is not anticipated to be published until September 2017 and I would not expect that plan to be adopted before mid-2018 at the earliest. Welbourne is the subject of an adopted LP and will be progressed through the appointment of a development partner who will not be identified until early 2018. Once identified the lpa/development partner will subsequently need to involve themselves in land acquisition through negotiation and/or compulsory purchase and to submit/determine major planning applications. On all the evidence before me, it appears to me, given the scale of the development and the constraints involved, which include the provision of a new junction on the M27 (albeit up to 500 units may be permitted before the new junction is required), the potential for significant development within the 5-year period is limited. In these circumstances, the material shortfall in housing land supply will continue and the backlog of housing required to meet local needs will grow.
64. As far as I am aware there are no constraints that would delay this development and as such granting permission would, in line with the clear objectives spelt out at Framework paragraph 47, provide for a significant and material boost/contribution to meeting housing needs within the District, particularly affordable housing. Drawing all this together, I consider that the contribution the appeal site could make to meeting the District's housing needs attracts very substantial weight in the planning balance.
65. Whilst, the objectives of CS Policy C14, CS 17 and LP 2 Policy DSP6 in seeking to protect the countryside from development are consistent with the fifth Core Principle identified at Framework paragraph 17, I conclude in this case that the limited harm in terms of the loss of B&MV agricultural land and landscape character and visual impact would not significantly and demonstrably outweigh the benefits of this scheme in making a material contribution to the significant shortfall in housing land. Accordingly, having regard to Framework paragraph 14, I consider the proposed development represents sustainable development.
66. In coming to the above conclusion, I have had regard to the appeal decision issued by the Secretary of State in 2006. However, I consider this decision was issued in the context of a materially different development plan context. Then, although located in countryside, the area was also identified in the development plan as a Local Gap and a Coastal Zone. Here local policy indicated that development that would physically or visually diminish undeveloped land within the gap would not be permitted. Now, although still defined for planning purposes as countryside, the open area to the west and south of the built-up area of Portchester is no longer classed as a Local Gap or within the Coastal Zone.

67. For the reasons, given above and having regard to all other considerations, I conclude that the appeal should be allowed.

### **Planning Conditions**

68. For the avoidance of doubt and in the interests of proper planning and I have imposed a condition relating to the specification of plans (4)<sup>18</sup>. Conditions relating the submission of details and the implementation of approved schemes in relation to: the construction of the estate roads (6); boundary treatment (7); archaeological investigations (8); foul and surface water drainage (9); an arboricultural assessment (10); existing and finished ground level and finished floor levels (11); the prevention of mud on the highway (12) construction traffic access (13) and the submission of a Travel Plan (14) are reasonable and necessary in the interests of the appearance of the area, highway safety, the identification and preservation of potential archaeology and the protection neighbours' living conditions. Conditions relating the prevention of fires (15), hours of operation (16); the treatment of hard surfaces (17) and a restriction on eaves height (20) are reasonable and necessary in the interests of appearance and neighbours' living conditions. In the interests of the appearance of the area, a condition relating to landscape implementation and maintenance (18) is necessary. In the interests of ecology, a condition requiring the development to be carried out in accordance with the submitted Ecological Construction and Management Plan (19) is necessary. Where necessary and in the interests of precision and enforceability I have reworded the suggested conditions.
69. At the inquiry, the lpa and the appellant agreed that the suggested conditions relating to boundary treatment, access details, external lighting/floodlighting and the insertion of roof lights were matters that were covered by the submitted plans, were unnecessary , duplicated other conditions or were matters that could be dealt with as part of the reserved matters submissions. I have not imposed these conditions.

*George Baird*  
Inspector

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<sup>18</sup> Numbers relate to those in the Schedule of Conditions.

## **Annex A**

### **SCHEDULE OF CONDITIONS**

1. Details of the appearance, scale, layout and landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
4. The development shall be carried out in accordance with the following approved drawings: Location Plan - Drawing 6132 LOC Rev D and J-D1708.00 Site access Layout and Highway Improvements.
5. No housing development including gardens and roads shall take place to the west of the hedgerow running north to south through the site as shown on Drawing No. 01 Rev W- Illustrative Site Plan.
6. No development shall commence until details of the width, alignment, gradient and type of construction proposed for any roads, footways and/or access/accesses, to include all relevant horizontal and longitudinal cross sections showing the existing and proposed ground levels, together with details of street lighting (where appropriate), the method of disposing of surface water, and details of a programme for the making up of roads and footways have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
7. No development shall commence until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwellings are first occupied or in accordance with a timetable agreed in writing with the local planning authority and shall thereafter be retained at all times.
8. No development shall commence until a preliminary archaeological survey establishing the location, extent, nature and significance of archaeological remains on the site including a mitigation strategy, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the agreed mitigation strategy.
9. No development shall commence on site until details of sewerage and surface water drainage works to serve the development hereby permitted have been submitted to and approved in writing by the local planning authority. None of the dwellings shall be occupied until the drainage works have been completed in accordance with the approved details.
10. No development shall commence until an Arboricultural Impact Assessment Report and Method Statement for tree/hedgerow protection has been

- submitted to and approved in writing by the local planning authority and the approved scheme implemented. The tree/hedgerow protection shall be retained throughout the development period until such time as all equipment, machinery and surplus materials have been removed from the site.
11. No development shall commence until details of the internal finished floor levels of all of the proposed buildings in relation to the existing and finished ground levels on the site and the adjacent land have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  12. No development shall commence until details of the measures to be taken to prevent spoil and mud being deposited on the public highway by vehicles leaving the site during the construction works have been submitted to and approved in writing by the local planning authority. The approved measures shall be fully implemented upon the commencement of development and shall be retained for the duration of construction of the development.
  13. No development shall commence until the local planning authority have approved details of how construction traffic will access the site, how provision is to be made on site for the parking and turning of operatives and delivery vehicles and the areas to be used for the storage of building materials, plant, excavated materials and huts associated with the implementation of the permitted development. The areas and facilities approved in pursuance to this condition shall be made available before construction works commence on site shall thereafter be kept available at all times during the construction period, unless otherwise agreed in writing with the local planning authority.
  14. Prior to the commencement of construction works a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall include arrangements for monitoring and effective enforcement. Development shall be carried out in accordance with the approved details.
  15. No materials obtained from site clearance or from construction works shall be burnt on the site.
  16. No work relating to the construction of any of the development hereby permitted (including works of demolition or preparation prior to operations) shall take place before the hours of 0800 or after 1800 hours Monday to Friday, before the hours of 0800 or after 1300 hours on Saturdays or at all on Sundays or recognised public holidays, unless otherwise first agreed in writing with the local planning authority.
  17. No development shall proceed beyond damp proof course level until details of the finished treatment of all areas to be hard surfaced have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and the hard surfaced areas subsequently retained as constructed.
  18. The landscaping scheme submitted under Condition 1 above, shall be implemented within the first planting season following the commencement of the development or as otherwise agreed in writing with the local planning

authority and shall be maintained in accordance with the agreed schedule. Any trees or plants which, within a period of 5 years from first planting, are removed die or become seriously damaged or defective, shall be replaced, within the next available planting season, with others of the same species, size and number as originally approved.

19. The development shall be carried out strictly in accordance with the Ecological Construction and Management Plan dated August 2016 and updated November 2016.
20. The dwellings shall not exceed two-storey eaves height.

## **ANNEX B**

### **APPEARANCES**

#### FOR THE APPELLANT

Christopher Boyle QC, instructed by the Bryan Jezepeh Consultancy.

He called:

Steven Brown BSc (Hons) Dip TP, MRTPI  
Woolf Bond Planning.

Liz Bryant MA, CMLI  
Allen Pyke Associates.

Michael Knappett BSc (Hons), BTP, MRTPI.  
Bryan Jezepeh Consultancy.

#### FOR THE LOCAL PLANNING AUTHORITY

Paul Stinchcombe QC, instructed by Fareham Borough Council

He called:

Andy Blaxland  
Director, Adams Hendry Consulting Limited.

Nicola Brown BA (Hons), BLand Arch, CertUD, CMLI  
Director, Huskisson Brown.

#### INTERESTED PERSONS

Mr Mullen.  
Mrs Fox.  
Ms Sawyer.  
Mr Woodman Portchester Civic Society.  
Cllr Price.  
Cllr Walker.  
Cllr Bell.  
Cllr Fazackarley.  
Cllr Cunningham.  
Ms Morton, Wicor Primary School.  
Mr Cable.  
Mr Britton.  
Mrs Kirk.

#### DOCUMENTS SUBMITTED AT THE INQUIRY

- Doc 1 - Phides Estates (Overseas) Limited and Secretary of State for Communities and Local Government and Shepway Council and David Plumstead [2015] EWHC 827 (Admin).
- Doc 2 - Supplementary Tables AB1, AB2 & AB3 to the evidence of Mr Blaxland.

- Doc 3 - Additional Suggested Condition – Field A.
- Doc 4 - Note in response to question from Mr Boyle.
- Doc 5 - Submissions by Cllr Walker.
- Doc 6 - Submissions by Cllr. Price.
- Doc 7 - Submissions by Cllr. Bell.
- Doc 8 - Submissions by Cllr Fazackarley.
- Doc 9 - Submissions by Cllr Cunningham.
- Doc 10 - Submissions by Portchester Civic Society.
- Doc 11 - Submissions by Mr Cable.
- Doc 12 - Submissions by Wicor Primary School.
- Doc 13 - Submissions by Mrs Kirk.
- Doc 14 - Summary of S106 Unilateral Undertaking.
- Doc 15 - Lpa CIL Compliance Schedule.
- Doc 16 - Email dated 27 April 2017, Response by Hampshire County Council regarding S106 Unilateral Undertaking Travel Plan Contributions.
- Doc 17 - S106 Unilateral Undertaking.
- Doc 18 - Minutes of Planning Committee 24 March 2016.
- Doc 19 - Appellant’s application for coosts.
- Doc 20 - Lpa response to the application for costs.

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED

- Doc 21 - Appellant’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).
- Doc 22 - Lpa’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).



## Appeal Decision

Hearing Held on 14 and 15 August 2018

Site visit made on 15 August 2018

**by Kenneth Stone BSc Hons DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 10<sup>th</sup> September 2018**

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**Appeal Ref: APP/A1720/W/17/3192431**

**Sawmills Industrial Park, Wickham Road, Fareham, Hampshire PO17 5BT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by BST Warehouses Ltd against Fareham Borough Council.
  - The application Ref P/17/0189/FP, is dated 17 February 2017.
  - The development proposed is described as 'demolition, site clearance and remediation with the erection of 72 C3 residential dwellings and associated access, parking, ancillary infrastructure and landscaping works'.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing applications for costs were made by BST Warehouses Ltd against Fareham Borough Council and by Fareham Borough Council against BST Warehouses Ltd. These applications are the subject of separate decisions.

### Procedural matters

3. Prior to validation the planning application was the subject of a screening direction issued by the Secretary of State for the Department for Communities and Local Government. The screening direction concluded that the proposed development was not EIA development.
4. The Council's Planning Committee considered the application following the appeal being lodged and resolved that had it had the opportunity to determine the application it would have refused permission for six reasons. Those putative reasons included reference to inadequate information in relation to land contamination, inadequate survey information in respect of protected species and the absence of a planning obligation. During the appeal and prior to the conclusion of the hearing further information was submitted to address issues related to land contamination and protected species and a Unilateral Undertaking (UU) planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 was executed and submitted. On this basis the Council confirmed it did not seek to pursue the reasons for refusal related to those matters. I address the planning obligations and matters arising out of that further information below. The sixth reason for refusal, related to highway

- matters, was not pursued by the Council following further information and discussion with the Highway Authority.
5. The remaining substantive issues between the parties related to the design quality of the scheme and the adequacy of infrastructure provision and these form the basis of the main issues set out below.
  6. The Solent is internationally important for its wildlife and three Special Protection Areas (SPAs) have been designated to protect over wintering birds. The Solent Recreational Mitigation Strategy (SRMS) requires contributions from all dwellings built within 5.6 Km of the boundaries of the SPA. The appeal site is located within the 5.6 Km zone of influence of the Solent SPAs and it is not disputed that a contribution is required and indeed such a contribution is secured in the UU.
  7. However, following the Court of Justice of the European Union judgement in the *People over Wind and Peter Sweetman v Coillte Teoranta*, case C-323/17 it is not permissible to take account of measures intended to avoid or reduce harmful effects of the plan or project on a European site at the screening stage under the Habitat Regulations Assessment. The proposed development is not directly connected with or necessary for the management of the Solent SPAs. Given the agreement between the parties that a contribution under the SRMS is required it is accepted and acknowledged that there would be a potential for the proposal to have a significant effect on the interest features of the site through the increased pressure resultant from an increase in the population resulting in increased visitor numbers with the potential for increased disturbance of the over wintering birds. Whilst the SRMS has been developed to mitigate such impacts given the recent judgement of the CJEU this cannot be taken into account at the screening stage and therefore it must be concluded that it is likely the proposal would have a significant effect, either alone or in combination with other developments, through the increased recreational pressure.
  8. The outcome of that conclusion is that an appropriate assessment must be carried out to determine whether or not the development would have an adverse effect on the integrity of the European site. But again given the justification for the required mitigation this is on the basis that there would be a significant effect that requires to be mitigated. The appropriate assessment therefore results in a conclusion that there is a risk of adverse effects on the integrity of the site. However, the HRA process then seeks to consider whether the adverse effects can be mitigated. In this regard there is a published mitigation strategy which has been agreed by various bodies including Natural England, the Statutory Nature Conservation Body. The appellant has provided a UU planning obligation which, among other matters, secures the payment of the required contribution to meet the SRMS and would therefore adequately mitigate the adverse effects that would result from additional recreational pressure on the integrity of the SPAs. There is therefore no bar to development on this basis.
  9. The National Planning Policy Framework at paragraph 177 advises that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined. Given this proposal has

been the subject of appropriate assessment this has implications for the approach to decision making which I return to below in the planning balance.

## **Main Issues**

10. The main issues in this appeal are:

- Whether the proposed development would represent high quality design and contribute towards an attractive, inclusive, safe, well-connected and sustainable community as required by development plan and national policy; and
- Whether the proposed development makes adequate provision for a reasonable proportion of the necessary infrastructure required to support Welborne.

## **Reasons**

### *Background*

11. The statutory development plan for the area comprises the Local Plan Part 1: Core Strategy (CS), the Local Plan Part 2: Development Sites and Policies (DSP) and the Local Plan Part 3: The Welborne Plan (WP). In respect of this appeal the CS and the WP provide the relevant development plan policy framework against which to consider the development.
12. Policy CS13 of the CS provides for a Strategic Development Area north of Fareham to provide for housing and supporting environmental, social and physical infrastructure along with retail and employment floorspace. The aim is for the new community to be as self-contained as possible whilst complementing and supporting the established town centre of Fareham. The policy also sets out high level development principles for the new development.
13. The WP takes forward the strategic development area allocation and sets out the broad type, location, amount and character of the development of Welborne and is provided to guide decision making on future planning applications for the site. The Welborne Design Guidance (WDG) is a supplementary planning document to explain the Council's expectations in the design of Welborne. It builds on policies in the WP and aims to ensure Welborne will be a well-designed development that fits in with the landscape and provides a high quality place to live.
14. Both parties refer to the strategic allocation as a garden village and I understand that Welborne has been identified by the government as a Garden Village which will provide priority access to funding streams and support to assist in progressing the delivery of the 6, 000 homes on the site and the supporting infrastructure.
15. There is an outstanding application under consideration by the Council by Buckland Development Ltd for development of the strategic allocation.
16. The Statement of Common ground accepts that the proposed delivery of housing on the appeal site in advance of the outline planning permission being granted for the wider Welborne Area would, in this case be acceptable and would not prevent the delivery of the overall vision for Welborne and as such is acceptable in principle and as a standalone phase from the wider Welborne project. The proposal, for residential development for the site, is in accordance

with the Strategic Framework Diagram referenced in para 3.50 of the WP which identifies the site for residential development.

17. The appeal site is an existing industrial site occupied by various industrial buildings with the majority of the site laid to open hard standing. It is presently in a relatively low intensity use. There are changes in levels across the site with the eastern boundary of the site, adjacent the A32, being higher than the western boundary, formed by Forest Lane and the southern end of the site, adjacent to existing residential development, being lower than the fields and open countryside that rise to the north of the site.

### *Quality of Design*

18. The National Planning Policy Framework at paragraph 124 clearly advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve and that good design is a key aspect of sustainable development. At paragraph 127 the Framework further advises that decisions should ensure developments will function well, be visually attractive, sympathetic to local character, establish a strong sense of place and optimise the potential of the site to accommodate an appropriate amount and mix of development. Paragraph 130 is clear that account should be taken of local design standards or style guides or supplementary planning documents in reaching conclusions on the design of a scheme, with poor design being refused but design not used by decision makers to object to development if it accords with the expectations of policies.
19. The context within which this development is to come forward is as an early phase of the Welborne Garden Village. It may be seen not to prejudice the wider implementation and delivery of the Garden Village but it is still part of the wider allocation and obtains its in principle acceptance as part of the strategic allocation. The scheme must be considered in the context of the planning framework for Welborne, the strategic allocation, development management policies in the Welborne Plan and, as a material consideration to provide further advice and guidance on those policies, the Welborne Design Guide. The success of the project will for a significant part be dependent on the implementation of a high quality design. As the first proposals to be determined in that context it is imperative the aims and aspirations for the Garden Village are fully realised in all its constituent parts.
20. The overall design considerations of the scheme have a number of facets that interact and contribute to the character and layout of the scheme, including the arrangement of buildings, open space provision, the scale and bulk of buildings, parking areas and the communal garden area.
21. Policy WEL2 in the WP supersedes the high level development principles for Welborne as originally set out in CS13. These include a requirement for each phase to be well designed and incorporate a range of densities and building heights to create a series of attractive places with different and distinctive characters. The WP identifies four character areas including a Woodland Character Area at Figure 4.1. The WDG provides further advice on the expectations and division of the character in these character areas. The appeal site would be located within the 'Woodland Character Area'. In advising on the character of Welborne as a whole the WDG at 2.33 advises that the more sensitive areas of the development are those on the outskirts of the site. In these locations it is suggested development would be expected to be less

intensive and pre-dominantly 2-storey. Page 34 includes design guidance for the Woodland Character Area and indicates residential development should be predominantly 2 storey with occasional 2.5 storey pre dominantly detached and semi-detached with occasional short terraces and a mix of setbacks. The Woodland Character Area should be characterised by tree cover that is a dominant feature of the area, a layout that ensures surrounding woodland is visible from within the site and in particular locations be of a more rural character.

22. The appeal proposals are predominantly formed of short blocks of closely spaced terraces set in formal arrangements and with building heights that incorporate a significant proportion of building heights in excess of 2 storeys. The resultant layout, form and character is one of a more urban or suburban residential estate. The limited separation of spaces between a number of the terraces result in longer runs of building frontages dominating the spaces. The Crescent terrace to the south of the site and the group of housing enclosing the SUDs space to the north form distinctly urban typologies. Similarly the main housing group fronting the large open space with narrow plots and higher building heights, including up to three storeys, dominate the centre of the scheme and produce a very civic appearance.
23. There is an east west pedestrian route through the site which could link to the wider Welborne development and form part of the Green corridor and infrastructure required in the WP. The relationship of this with the large open area in the centre of the site contributes to a strong element of green infrastructure. However, its effectiveness is reduced to some extent by the subdivision from the SUDs area to the north and the children's play area and the constrained access points onto Wickham Road and Forest lane.
24. The large open space and the green route that runs through the site provide the potential for tree planting but given the limited other spaces and dominance of the road through the scheme this would not result in a Woodland Character where tree cover was a dominant feature. The nature of the road alignment and positioning of the blocks would restrict views to the wider areas beyond the site and reduce views to the woodlands beyond to glimpsed views rather than integrated within the overall design and contributing to the importance of woodland in those views.
25. In my view this conflicts with the Councils expectation for the area which would suggest lower intensity development in a more informal layout with a more rural character and could undermine WEL2 which seeks to ensure that development creates a series of attractive places with different and distinctive characters.
26. There are a number of locations where the layout provides flank walls and garden boundaries onto roads conflicting with the advice in the WDG and providing for poor or reduced surveillance of these sections of the site.
27. The northern section of the site is particularly unsuccessful in seeking to address the issues raised by the site. Whilst I acknowledge that the WDG seeks to promote perimeter block development it does not require only such a form of development and that would be inappropriate. This site is constrained is previously developed has significant variations in levels and other factors which may suggest that such an approach is not the only solution. However, many of the principles behind the perimeter block approach including natural

surveillance, defensible space, the separation and definition of public and private spaces are important concepts to retain. With the use of the parking courts many of these respected principles are lost. Much of the parking areas in these locations are poorly over looked are not readily distinguishable as private or public spaces or provide clear demarcation of ownership. They are poorly screened and are somewhat unrelieved unattractive large areas of hardstanding. Whilst it was suggested additional windows could be inserted in the flank walls of properties fronting these spaces to increase overlooking that does not address the basic issue. These windows would in any case at best be secondary windows or not to primary habitable rooms which would do little to improve passive surveillance of the parking areas.

28. These would conflict with WEL6 which requires development, amongst other matters, to provide a layout and design that will help to create safe well-connected neighbourhoods.
29. The small block of flats located at the entrance to the development appears shoehorned into this section of the site and has limited space for its setting or to provide amenity space for future occupiers of the building. The limited space to the building, the scale of the elevations and the proximity of tree planting would result in the southern space being unwelcoming and unattractive as a private amenity space for future occupiers.
30. The general appearance of the entrance to the site is somewhat compromised by the level of activity, limited space around the flat block, the additional private access for the four detached properties combining to produce an intensity of built form and level of activity that contributes to a more urban character for the scheme.
31. Bringing all these matters together I conclude that the proposed development would result in a development with a strong urban character conflicting with the more woodland character area proposed and the generally more informal and lower intensity of development rural character sought for this part of Welborne. This would result in a development which would compromise the expectations for the character and appearance of the area. The layout and design introduces elements that produce areas where surveillance would be poor and amenity provision for future residents was unacceptably constrained. On this basis the proposed development would not represent high quality design and would not contribute towards an attractive, inclusive, safe, well-connected and sustainable community as required by development plan and national policy.

#### *Necessary infrastructure*

32. Welborne as a new settlement which is aiming for the most part to be self-sufficient has been justified and evidenced on the basis of a delivery plan and assessment of the necessary infrastructure it will require to meet its needs. The WP is supported by an Infrastructure Delivery Plan and the extant application for the wider Welborne development is accompanied by an updated Infrastructure delivery plan.
33. The applicant has not submitted such a plan with their application albeit that such documentation is suggested to be appropriate in the WP. The Council have validated the application on the back of the applicant providing a note

- summarising how the development would contribute to the wider infrastructure costs for Welborne and a further note on these matters.
34. It was accepted at the hearing that the Council do not object to the specific costings the appellant has put forward as they have no evidence to challenge those.
  35. I also note that the appellant has drawn attention to the fact there is sufficient capacity in the local primary and secondary schools to meet the demands of the development and that there was sufficient capacity in the local doctors surgeries and dentists.
  36. However the principle of the development is predicated on the site forming part of the wider Welborne development and that as the new Garden Village develops there would be an expectation that the occupants of this development would use the services and facilities in the wider Welborne development and not travel to other areas. It is not unreasonable to expect all parts of the Welborne strategic allocation to make its proportionate contribution to the provision of the necessary infrastructure to support Welborne's future residents.
  37. The appeal site is a previously developed area of industrial land and will require significant decontamination. The decontamination costs form a significant portion of the costs in the appellants note to demonstrate that these are part of their contribution to the necessary infrastructure. However I have no evidence or clarity before me on whether the decontamination costs formed part of the wider Welborne IDP costs and whether the appellant's costs are of a similar scale. Similarly I have no indication as to whether by the appellant decontaminating this site that would reduce, or by how much, the cost that would be borne by the wider Welborne development. In these circumstances there is no clarity on whether there is cross subsidy such that would then justify reductions in other contributions.
  38. I note that the high costs of the development ascribed by the appellant but these appear in many instances to be the normal costs associated with a development of a previously developed site to a standard required by development plan policy. Whilst I acknowledge the higher per unit costs towards these matters as compared to the IDP costs divided across the wider Welborne development that does not address the issue. The evidence before me demonstrates that the appellant does not contribute towards infrastructure of schools, primary health care, extra care housing, community buildings, market square public realm sports facilities etc; indeed all of the social and services necessary to support a thriving community. What the costs provided show are costs associated with decontamination, the provision of green infrastructure, transport, and physical energy and drainage projects. But these are all necessary costs of the development.
  39. Overall, on the basis of the above, I conclude that the development does not make adequate provision for a reasonable proportion of the necessary infrastructure required to support Welborne. The proposal would therefore conflict with policy WEL41 which requires development to be undertaken in accordance with an agreed delivery plan unless there is suitable alternative appropriate infrastructure to adequately service the development.

## **Planning Obligations**

40. The appellant has secured planning obligations through a Unilateral Undertaking under sec 106 of the Town and Country Planning Act 1990. The UU contains six schedules which set out the obligations the owner undertakes to observe and perform.
41. Schedule one contains obligations related to highway works and a travel plan. These ensure that the highway works will be undertaken at the appropriate stage of development and follow the appropriate mechanisms. The travel plan will encourage sustainable travel. These matters are in accordance with policies WEL23 and WEL27 in the WP and are directly related to the development and fairly and reasonably related to the scale of the development.
42. Schedule 2 contains obligations which secure the provision of 22 affordable housing units, 15 as affordable rent and 7 as shared ownership. The obligations address issues including transfer, delivery, stair casing and release. Three wheelchair units are also secured. The provision of 30% of the units as affordable units is in accordance with policy WEL18 of the WP and is therefore fairly and reasonably related in scale and kind to the development.
43. Schedule 3 secures the provision and management of the open space and play area. These are consistent with the requirements of policies WEL29 and WEL35 of the WP and are fairly and reasonably related to the scale and kind of the development.
44. Schedule four secures the financial contribution required for the SRMS. The contributions are not used for the provision of infrastructure and so are not caught by the pooling restrictions under the Community Infrastructure Levy Regulations. The SRMS contributions support the management of the SPAs to mitigate the harmful impact of additional recreational activity on nesting birds/wading birds within the Solent region. The contributions are therefore fairly and reasonably related in scale and kind to the development.
45. Schedule 5 secures public access to the onsite routes to support the wider Welborne development and ensure access to the green corridors and general access through the wider allocation development as it comes forward. The provisions are therefore reasonably and fairly related to the scale and kind of the development.
46. Finally schedule 6 secures the provision and implementation of an Employment and Skills Plan in accordance with policy WEL43 to provide opportunities for local people to be involved in employment and training during construction. This directly relates to the implementation of the development and in part is directed towards the social dimension of sustainable development. The obligation is fairly and reasonable related to the scale and kind of the development.

## **Benefits of the Scheme**

47. The proposed development would provide for some 72 new dwellings in an Authority where the Council accept that it can only provide for between 3.5 years and 4 years of housing land supply. The houses would come forward now and be an early housing opportunity and first delivery from the Welborne allocation which will contribute to the Council's housing delivery target. This is a significant benefit but given the limited number of units I reduce the overall

weight of this factor and afford it moderate weight. Of those new houses the development would make provision for 15 affordable units, secured through the UU. The Council has a significant need for affordable housing but given the limited number of units provided, which is also no more than policy requires, I also attach moderate weight to this benefit.

48. The appellant suggests the remediation of the site is a key benefit of the scheme. Whilst the old industrial, somewhat dilapidated buildings, hard surfacing and previously developed land would be removed and the site brought into a more productive use this would be the case in any redevelopment of the site. On this basis I give this only limited positive weight as a benefit of the scheme.
49. The scheme would result in the moving of the main access on the A32 and removal of any vehicular access through the site between the A32 and Forest Lane. These are matters that would improve highway safety and are minor benefits of the scheme. Again they could be secured with any redevelopment of the site. I afford this limited positive weight.
50. The site would make provision for connection to the foul drainage network which could facilitate surrounding properties also connecting to the foul drainage system reducing the reliance on soakaways. This is a minor benefit of the scheme to which I attributed limited positive weight.
51. The appellant suggests that positive benefit derives from the landscaping and green infrastructure provided on the site. However, this is a necessary requirement to meet policy and ensure the development provides a good standard of amenity for future residents', to protect adjoining occupiers and addresses ecological requirements. It is also necessary to address the woodland character area within which it is proposed. It is not therefore a positive benefit of the scheme.
52. Adjoining the site is Mill House, a grade II listed building. The proposed development would remove existing large industrial structures close to the boundary and improve the setting of the listed building. This is a positive benefit to which I attribute moderate positive weight.
53. Any mitigation measures provided or secured in respect of the scheme are not positive benefits but seek to address and mitigate the impact of the development.
54. There would be economic benefits associated with the development including new homes bonus, CiL payments for which the development would be liable, the additional spend in the local economy during implementation of the development and the additional financial and community support derived from the increased population using services and facilities in the area once the development is occupied. I give this moderate positive weight.

### **Other matters**

55. The Council following the publication of the new Framework have confirmed that their supply of available housing land would be in the range of 3.5 to 4 years supply. The appellant accept that this is a reasonable range for the authority at this point in time. The Council cannot therefore demonstrate a 5 year supply of housing land.

56. The development would remove the existing buildings and hard surfacing from the land and de-contaminate the site. The Council originally provided a putative reason for refusal in respect of land contamination however upon receipt of further information have not continued with any objections to the scheme on that basis. The Council is satisfied that should permission be forthcoming land contamination could satisfactorily be addressed by condition and I have no evidence before me to disagree with those conclusions.
57. Similarly further information including further survey work and a mitigation strategy to address any concerns that may arise in respect of Dormice has been provided. Agreement has been reached between the parties that the most appropriate way forward is to accept that there is a strong likelihood that Dormice are on the site. On this basis the appellant has produce a Dormice mitigation strategy in the event it is demonstrated that they are. The Council, and County Council ecologist, accept that the mitigation strategy would address the effects of the development on Dormice if they were to be identified. On this basis a condition requiring the implementation of the Dormice mitigation strategy in the event Dormice were established to be on the site would be an appropriate way forward.

### **Planning Balance**

58. Given that the development has been subject to appropriate assessment the presumption in favour of sustainable development at paragraph 11 of the Framework does not apply. The proposal is therefore only to be considered on the basis of the section 38(6) balance such that the appeal should be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case I have concluded that the proposal would not be high quality design and would conflict with development plan policies CS13 WEL2 and WEL6. I have also concluded that the proposal would not provide adequate infrastructure contributions and would therefore conflict with WEL42.
59. The Council cannot demonstrate a 5 year housing land supply and therefore the provision of housing including affordable housing is a significant consideration. However I have given this only moderate positive benefit given the scale of the development. I have noted a number of other benefits associated with the scheme and take account of the weight I have ascribed to them above.
60. The Framework advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Given the conflict with the development plan and the advice on design in the Framework the other considerations do not indicate that a decision otherwise is appropriate. Albeit there is a shortfall in the housing land supply this is the first development in a Garden Village where design will be fundamental to its success and the shortfall of housing does not mean housing at any cost.

### **Overall conclusion**

61. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Simon Ricketts	Town Legal LLP
Gavin Hall	Savills
Richard Powell	Latchmoor Properties
Bruce Slattery	Jacobs Engineering
Jonathan Moore	MH Architects
Andrew Linfoot	Jacobs Engineering

### FOR THE LOCAL PLANNING AUTHORITY:

Luke Simpson	Adams Hendry
Alex Russell	Southampton & Fareham Legal Services Partnership
Justin Leach	LDA Design
Valerie Conway	VE Consulting
Maral Miri	Hampshire County Council

### INTERESTED PERSONS:

Mrs Brenda Clapperton	Secretary of Fareham Society
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### DOCUMENTS SUBMITTED DURING HEARING

- 1 Draft Unilateral Undertaking and summary Schedule submitted by appellant
  - 2 Comments on Revised National Planning Policy Framework submitted by Council
  - 3 Comments on revised national Planning Policy Framework, summary of outstanding issues and Dormouse mitigation strategy submitted by appellant
  - 4 Copy of e-mail from Council to Pins Case officer dated 10 August including NPPF statement, pre-application proposal, delivery trajectory for Welborne The Executive Leaders Announcement on HLS and extracts of Draft Planning Practice Guidance
  - 5 Copy of Judgement of European Court C323/17 People Over Wind and Peter Sweetman v Coillte Teoranta submitted by Council
  6. Copy of updated planning condition 2 to update plan reference numbers and copies of relevant plans (latest revisions)
  - 7 Copy of extract from Welborne Infrastructure Delivery Plan related to New Homes Bonus submitted by appellant
  - 8 Copy of various amended conditions submitted by appellant
  - 9 Original of signed, sealed and dated Unilateral Undertaking
  - 10 Appellants application for Costs
  - 11 Council's application for Costs.
- END



## Appeal Decision

Inquiry Held on 6 - 9 November 2018

Site visit made on 9 November 2018

**by Kenneth Stone BSc Hons DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12<sup>th</sup> April 2019

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**Appeal Ref: APP/A1720/W/18/3199119**

**Land east of Posbrook Lane, Titchfield, Fareham, Hampshire PO14 4EZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Foreman Homes Ltd against the decision of Fareham Borough Council.
  - The application Ref P/17/0681/OA, dated 9 June 2017, was refused by notice dated 14 December 2017.
  - The development proposed is described as an 'Outline Planning Application for Scout Hut, up to 150 Dwellings, Community Garden, associated landscaping, amenity areas and means of access from Posbrook Lane in addition to the provision of 58,000 square metres of community green space'.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application was submitted in outline with all matters reserved for future consideration with the exception of access. The access details are shown on the plan 'Proposed Site Access 16-314/003E' which along with the 'Site Location Plan 16.092.01E' are the plans that describe the proposals. An illustrative plan was submitted and the latest iteration was 16.092.02F. However, this was for illustrative purposes only to demonstrate one way in which the site could be developed but does not form part of the formal details of the application.
3. Prior to the commencement of the Inquiry the Council and the appellant entered into a Statement of Common Ground. The original application had been submitted with the description of development in the banner heading above. The parties agreed that there was no requirement for the Scout Hut and removed this from the illustrative master plan and amended the description of development to reflect the amended proposed development.
4. I am satisfied that the proposed alteration to the scheme, which does not amend the red line boundary and makes only a minor adjustment to the overall scheme, is not material. I am satisfied that there would be no material prejudice to parties who would have wished to comment on the proposals and that the amended illustrative plan was available as part of the appeal documents and therefore available for parties to view and comment on. I have therefore considered the appeal on the basis of the amended description which

read as follows: 'Outline application for up to 150 dwellings, community garden, associated landscaping, amenity areas and a means of access from Posbrook Lane.'

5. In the Statement of Common Ground the Council and the Appellant agree that an Appropriate Assessment would be required in the light of The People Over Wind Judgement<sup>1</sup>. During the Inquiry a shadow Habitats Regulations Assessment document was submitted (APP4) to enable an Appropriate Assessment to be made. In this regard I consulted with Natural England to ensure that I had the relevant information before me if such an assessment were to be required. The main parties were given the opportunity to comment on Natural England's consultation response.
6. By way of an e-mailed letter dated 5 November 2018 the Secretary of State notified the appellant, pursuant to regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, that further information was required. The further information was publicised on 4 January 2019, a period of 31 days was given for the receipt of comments and the parties were given a period following the end of the publicity period to collate and comment on the matters raised.
7. I have had regard to all the Environmental Information submitted with the appeal including the original Environmental Statement, the Additional Information, the Shadow Habitats Regulations Assessment, the further responses and the parties' comments in reaching my conclusions on this appeal.
8. The Council has drawn my attention to a recent appeal decision, at Old Street, APP/A1720/W/18/3200409, which had been published since the Inquiry was conducted and in which similar issues were considered in respect of the Meon Valley. The parties were given the opportunity to comment on this decision.
9. The Government published a revised National Planning Policy Framework (the Framework), and updated guidance on how to assess housing needs as well as results of the Housing Delivery Test along with a technical note on 19 February 2019. The parties were given the opportunity to comment on how these may affect their respective cases. I have had regard to this information and the comments of the parties in reaching my decision.
10. I closed the Inquiry in writing on 19 March 2019.

### **Main Issues**

11. In the Statement of Common Ground the appellant and Council agree that with the completion of a satisfactory legal agreement reasons for refusal e through to l would be addressed. No objections to the Unilateral Undertaking were raised by the Council and these matters were not contested at the Inquiry. It was also agreed in the Statement of Common Ground that reason for refusal d could be overcome by the imposition of an appropriately worded condition, and I see no reason why this would not be appropriate.
12. On the basis of the above the remaining outstanding matters and the main issues in this appeal are:

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<sup>1</sup> The Court of Justice of the European Union judgement in the People over Wind and Peter Sweetman v Coillte Teoranta, case C-323/17

- The effect of the proposed development on the character and appearance of the area, including having regard to whether or not the site is a valued landscape and the effect on the strategic gap;
- The effect of the proposed development on the setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II\* listed buildings; and
- The effect of the proposed development on Best and Most Versatile Agricultural Land (BMVAL).

## Reasons

13. The development plan for the area includes The Local Plan Part 1: Core Strategy (2011 -2026) (LPP1), The Local Plan Part 2: Development Sites & Policies (2015) (LPP2) and The Local Plan Part 3: Welbourne Plan (2015) (LPP3).
14. LPP3 specifically addresses a new settlement at Welbourne and does not include policies that bear directly on the effects of the development the subject of this appeal. Its relevance is however material in the context of the wider housing land supply issues in the area.
15. In terms of LPP1 policy CS14 seeks to control development outside defined settlement boundaries seeking to resist proposals which would adversely affect its landscape character and function. While policy CS22 advises land within strategic gaps will be treated as countryside and development proposals will not be permitted where it affects the integrity of the gap and the physical and visual separation of settlements.
16. In LPP2 Policy DSP6 further advises in respect of residential development outside of defined urban settlement boundaries that it should avoid a detrimental impact on the character or landscape of the surrounding area. DSP5 addresses the protection and enhancement of the historic environment. In considering the impacts of proposals that affect designated heritage assets it advises the Council will give great weight to their conservation and that any harm or loss will require clear and convincing justification, reflecting the statutory and national policy positions.
17. Policy DSP40 in LPP2 includes a contingency position where the Council does not have a 5 year supply of housing land. It is common ground between the parties that the Council does not have a 5 year supply of land for housing albeit the extent, length of time this may persist and consequences are disputed. I address these latter matters further below however insofar as the parties agree that the Council cannot demonstrate a five year supply of housing land the contingency position in policy DSP40 is engaged and this advises that additional sites outside the urban area boundary may be permitted where certain criteria are met.
18. An emerging draft Local Plan, which in due course is anticipated to replace LPP1 and LPP2, was launched for consultation in autumn of 2017 but has now been withdrawn. At the time of the Inquiry I was informed that a further review is to take place following revisions to the National Planning Policy Framework and the Government's latest consultation in respect of housing figures. The Council propose to consult on issues and options relevant to the progression of the Council's new development strategy following the outcome

of the Government's recent consultation. Consultation on a new draft Local Plan is not now anticipated until the end of 2019.

19. The Titchfield Neighbourhood Plan 2011 – 2036 (TNP) is also emerging; it was published for consultation in July 2018 with a further draft submitted to the Council for a compliance check, in October 2018, prior to consultation as the submission draft. At the Inquiry it was confirmed that further documents were submitted to the Council and that the TNP complied with the Statutory requirements. The Council undertook Consultation on the submission draft between November 2018 and January 2019 but at this point in time the plan has not yet been submitted for independent examination. The TNP includes a plan identifying the strategic gap, the Meon gap, and the Defined Urban Settlement Boundary (DUSB) as well as housing policies which review the DUSB (DUSB 1) and address windfall sites (H1), affordable housing (H2), Local Need (H3) and Development Design (H4).

*Character and Appearance, including Valued Landscape and Strategic Gap*

20. The appeal site is an area of some 6.6 ha of open grazing field on the east side of Posbrook Lane. The land gently slopes from its north-west corner towards its eastern edge. The site is segregated from Posbrook Lane by a hedgerow but for the most part the site is open with little demarking fences, trees or hedge rows. There is some evidence of a previous subdivision of the site on a modern fence line however only limited post foundations remain and generally the whole site has a reasonably consistent grazed grassland appearance.
21. To the north, the appeal site abuts the settlement edge of Titchfield at an estate called Bellfield. The urban edge is open and harsh with little by way of softening landscaping. Towards the south-western corner the site abuts a cluster of buildings that includes the farmstead of Posbrook farm and which includes two Grade II\* listed buildings (the Farmhouse and the southern barn). The boundary between these is screened for the most part by a substantial tree and hedgerow belt. Beyond these and towards the south are open agricultural fields. To the east the site slopes down to the Titchfield Canal, valley floor and River Meon beyond.
22. The Meon Valley is a major landscape feature that runs through the Borough and slices through the coastal plain. The parties agree that the site is located within the Lower Meon Valley Character Area but disagree as to the finer grain character type as detailed in the 1996 and 2017 Fareham Landscape Assessments. The appellant points to the 2017 Assessment identifying the western part of the appeal site as being identified as open coastal plain: Fringe Character with a small portion of the site being open valley side. The Council contend that the whole site is more appropriately identified as open valley side.
23. The difference in opinion and identification relates to the influence of the urban settlement boundary, the topography of the site and other landscape features in the surroundings. The fact that the 2017 classification is based on somewhat historic data does call into question the accuracy at the finer grain. There is some evidence in terms of photographs and on site that the site was subdivided and that there may have been different practices implemented which resulted in parts of the site having a different appearance and therefore leading to a different classification at that stage. On site I was firmly of the view that the site was of an open character with little in the way of field boundaries, hedges or other landscape features to different areas of the site.

Whilst there was a break in the slope this was minimal and did not change the characterisation from a gentle slope. There were minor variations across the site and I was not persuaded that this was such a feature that would change the character type of the site. Finally, in the context of the urban settlement edge influence it is undeniable that it is there. There is a lack of screening and there is a harsh and readily visible urban edge. This however is a distinct break with the open rural field which then flows to the open agricultural fields beyond the farmstead cluster and the lower valley floor below. In my view in the wider context the urban influence is given too much weight in the appellant's assessment and in association with the sub division of the site into smaller fields adds to the reduced weight given to the effect of the proposed development.

24. The proposed development would result in the provision of a suburban housing estate of up to 150 units on an open field that would substantively change the character of the field. The field appears, when looking south and east, as part of the broader landscape compartment and part of the Lower Meon Valley landscape. Views back towards the site would result in the perception of the intrusion of housing further into the valley and valley sides to the detriment of the character of the valley. The characteristics of the site are consistent with those of the Meon Valley and representative of the open valley side which includes sloping landform, a lack of woodland with views across the valley floor and is generally pastoral with some intrusive influences of roads or built development.
25. The visual effects of the development would be evident from a number of public footpaths both through and surrounding the appeal site as well as along Posbrook Lane, to the south and from the valley floor and opposite valley side. The further encroachment of built development into the countryside would detract from the rural appearance of the area.
26. The potential for landscaping to screen and reduce the visual effects and to a certain extent provide some positive contribution was advanced by the appellant. Whilst additional landscaping along the proposed urban edge would produce an edge that was more screened and in effect a softer edge than present is undeniable and would of itself improve the appearance of the existing urban edge. However, this needs to be weighed against the loss of the open field separation of elements of built development and the creeping urbanisation of the area. Whilst planting would assist in reducing the direct line of sight of houses in the longer term there would still be effects from noise, activity, illumination in the evening along with the localised views that would inevitably and substantively change.
27. I would characterise the landscape and visual effects as substantial and harmful in the short to medium term, albeit this would reduce in the longer term, I would still view the adverse effect as significant.
28. There is some dispute as to whether the site is a valued landscape. The Lower Meon Valley is a significant landscape feature and both parties assessed the site against the box 5.1 criteria in Guidelines for Landscape and Visual Impact Assessment. In this context it is a reasonable conclusion that both parties accept that the Lower Meon Valley has attributes that are above the ordinary. There is some debate as to whether the appeal site contributes to these or is part of that as a valued landscape. On the basis of the evidence before me I

have no difficulty in accepting that the Lower Meon Valley is a valued landscape in the context of the Framework and this is a conclusion consistent with my colleague in the Old Road decision. From my visit to the site and the evidence presented to me I am of the view that the appeal site shares a number of those attributes including the nature of the rural landscape and topography, its scenic quality and that it is representative of the valley sides character type. The site does form part of the broad visual envelope of the Lower Meon valley and part of the landscape compartment and therefore should be considered as part of the valued landscape.

29. Turning to the issue of the strategic gap. The appeal site is located in the Meon Valley strategic gap. The purpose of the strategic gap as identified in policy CS22 is to prevent development that significantly affects the integrity of the gap and the physical and visual separation of settlements. Whilst the Council sought to broaden this out to include the setting of settlements that is not how the development plan policy or indeed its policy justification is written. This states the gaps help to define and maintain the separate identity of individual settlements and are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green corridors. To go beyond these factors in assessing the development against policy would be introducing tests that are not within the development plan.
30. The proposed scheme would extend the urban edge of Titchfield further into the gap than it presently is. There would however be no perception of coalescence or indeed any visual reduction of the separate settlements (I do not see the cluster of buildings as a separate settlement in this context). There would be no demonstrable reduction in the physical separation and the gap's integrity would not be significantly affected. Whilst there would be a minor outward extension in the context of the settlement pattern and separation of settlements the proposed development would be minor and would not result in a significant effect.
31. Overall for the reasons given above I conclude that the proposed development would result in material harm to the character and appearance of the area. This would result in harm to a valued landscape. There would however be no significant effect on the strategic Meon Gap. Consequently, the proposed development would conflict with policies CS14 and DSP6 which seek to protect the character and appearance of the area of land outside the defined urban settlement boundary but would not conflict with policy CS22.

*Setting of 'Great Posbrook' and the 'Southern barn at Great Posbrook Farm' Grade II\* listed buildings*

32. South of Titchfield on the east side of Posbrook Lane there is an historic farmstead that includes the listed buildings of Great Posbrook and the southern barn at great Posbrook farm. Both of these are Grade II\* which puts them in the top 8% or so of listed buildings in the Country. They are a significant and invaluable resource.
33. The list description for Great Posbrook identifies it as a C16 house altered in the C19 with evidence of elements of C17 and C18 interior details. There is some question mark over the precise dating of the origins of the building with the Council pointing to evidence that it dates from early C17. While the alterations have created two parallel ranges the earlier T shaped form is unusual and is of particular architectural importance because of its rarity. The

main parties' experts agree that the building is of considerable historic interest due to its fabric, architectural composition and features.

34. The list description for the southern barn identifies it as a late medieval aisled barn. However, the Council point to more recent dendrochronology which indicates that it is likely to be late C16 or early C17 with the eastern end being C18. It is a substantial historic barn with considerable vernacular architectural interest being a good and relatively rare example of a high status English barn. Its size and scale demonstrating its association with a high status farm.
35. The listings make reference to other buildings in the cluster forming the farmstead including a store shed, small barn, cartshed and pigsties but note that these are of local interest only. The main listed buildings together with the buildings of local interest form an early farmstead with a manorial farmhouse, significant barn and numerous other buildings. There have been recent interventions as part of enabling development which resulted in the demolition of modern farm buildings the conversion of some of the historic buildings and the construction of new buildings to provide for additional residential occupation on the site. Much of the new building footprint was related to original buildings in an attempt to reinstate the historic arrangement of farm buildings in a courtyard pattern.
36. The significance of the listed buildings and the farmstead derives from the age, architectural quality, size, scale and relationship of buildings. There is a functional relationship with the adjoining land which was likely farmed as part of the farm holding and reasonable evidence to suggest that there may be an associative link with Titchfield Abbey which adds and contributes to this significance. There has been some more recent and modern infill development and recent housing within the farmstead adjacent and in the wider setting which has a negative impact and detracts from the significance. The wider setting of the site within a rural landscape assists in understanding the scale and status of the land holding, sets the farmstead in an appropriate open rural agricultural setting and separates it from the close by settlement of Titchfield. This contributes to the overall significance of these assets.
37. The proximity of the settlement of Titchfield and the exposed urban edge already have a negative impact on the wider setting of the heritage assets bringing suburban development close to the farmstead and reducing the wider rural hinterland.
38. The appeal site is formed by open land that wraps around the northern and eastern edge of the cluster of buildings within which the farmstead is set. It lies between the southern edge of Titchfield and the northern edge of the cluster of buildings and abuts the northern and eastern boundary of the farmhouse.
39. It is common ground that the proposals would not result in physical alterations to the listed buildings. There would be no loss of historic fabric or alterations to the architectural quality or form of the actual buildings. Similarly there would be no direct alteration of the farmstead.
40. Both parties also agree that the proposal would be located within the setting of the listed buildings and the farmstead. There is also agreement that the proposal would result in harm to the setting of the listed buildings by virtue of built development being closer to the buildings and reducing the rural setting of the buildings. Whilst both parties accept that the harm would be less than

substantial in terms of the Framework, the dispute arises in respect of the level of that harm. The appellant broadly contends that there are limited aspects where the effect would be perceived or experienced and with appropriate landscaping the effect would be reduced over time such that it would fall at the bottom end of the spectrum of less than substantial harm, albeit acknowledging that some harm would be occasioned. The Council on the other hand would put the harm more to the middle of the range that would be less than substantial and contend there are a number of areas where the perception would be significant, that the landscaping may reduce the effect over time, but not remove it, that the noise, activity and illumination associated with a suburban housing estate would further add to that impact and that the effect of changing that land from open rural land to suburban housing would fundamentally alter the setting and obliterate some of the functional and associative links with the adjoining land, albeit different degrees of weight were ascribed to the various elements of harm.

41. There is no dispute that the site would result in the introduction of housing on the area of land adjacent and bordering the farmstead and main farmhouse. This would bring the settlement of Titchfield up to the cluster of buildings and in effect subsume that once separate element into the broader extent of the settlement. This would reduce the connection of the existing farmstead and listed buildings to the rural hinterland and obscure the separation from the nearby settlement. The character of that change would be noticeable and harmful. It would be perceived when travelling along Posbrook Lane when leaving or entering the village and would be readily appreciated from Bellfield and the adjacent existing settlement edge. There are also public footpaths running through the land. These would be both static and kinetic views when moving along and between the various views. This would be a significant and fundamental change.
42. When viewed from the south, along Posbrook Lane and the public footpaths, travelling towards the farmstead and Titchfield the size and scale of the barn are fully appreciated, there are views available of the manorial farmhouse within these views and together the site is recognisable as a distinct farmstead. Whilst the urban edge of Titchfield is also visible it is appreciated that there is a degree of separation. The proposed development would intrude into these views and in the short to medium term would be readily distinguishable as suburban housing. In the longer-term landscaping may reduce this negative effect by the introduction of a woodland feature at its edge, which the appellant argues is reflective of the historic landscape pattern in the area. However, this would introduce a sense of enclosure around the farmstead and listed buildings that would detach them from the rural hinterland and reduce that historic functional connection with the adjoining open land. Whilst there is evidence of small wooded areas in the historic mapping these were freestanding isolated features and not so closely related to areas of built development. The point of the historic pattern in the area is the farmstead with open land around that was once farmed by the manorial farm and which would not have included such features in such proximity to the main farmstead.
43. There would also be views of the relationship between the farmhouse and the proposed development in views on the public paths to the east. Again, these would be significant and harmful in the short to medium term. There may be some reduction in that harm as landscaping matures but even with dense planting and the softening of the existing urban edge it will be an undeniable

fact that suburban development has been undertaken and that there is no separation between the settlement of Titchfield and the historic farmstead including the listed buildings.

44. For the reasons given above I conclude that there would be harm to the setting of the listed buildings and historic farmstead. I would characterise that harm as less than substantial as this would not obliterate the significance of these historic assets. The proposal would however have an adverse and harmful effect on the setting of these assets which would affect their significance given the contribution that the setting makes to that significance. The urbanisation of the remaining area that separates the farmstead and listed buildings from the settlement is significant and whilst the rural hinterland remains to the south and west the dislocation from the existing built up area is an important and fundamental component of that setting that would be lost as a result of the development. The effect is therefore significant and would not in my view be at the lower end of the less than substantial scale as contended by the appellant but more in line with that suggested by the Council. The proposal would therefore conflict with development plan policy DSP5 which seeks the protection and enhancement of heritage assets and is consistent with national policy.
45. These are two Grade II\* listed buildings and the Framework advises that great weight should be given to a designated heritage asset's conservation, any harm should require clear and convincing justification and assets should be conserved in a manner appropriate to their significance. I also have regard to my statutory duty in respect of listed buildings and their setting. The courts have also held that any harm to a listed building or its setting is to be given considerable importance and weight. These matters are reflected in my planning balance below, which includes the Framework's 196 balance.

*Best and Most Versatile Agricultural Land*

46. The appellant undertook a survey of agricultural land and this assessment is provided in appendix SB3 of Mr Brown's proof. This identifies the limited amount of Grade 3a land (4.1 Ha) that would be affected by the development and sets this in the context of Fareham. In my view this does not trigger the sequential test in the Framework footnote 53 as significant development.
47. It is accepted that whilst there is a loss of BMVAL and that this is a negative to be weighed against the scheme it would not of itself amount to such that would justify the dismissal of the appeal. This is a point that was not refuted by the Council who accepted that it may not justify dismissal but should be weighed as a negative factor in the overall balance against the development.
48. I have no substantive evidence to depart from those views and the approach adopted is consistent with that of a colleague in an appeal at Cranleigh Road (APP/A1720/W/16/3156344).
49. The appellant's report concluded that given the grade of land, the small scale and the overall comparative effect on such land in Fareham, whilst it is a negative, it should be afforded no more than limited weight. I concur with that assessment for the views given and therefore ascribe this loss limited weight in my overall planning balance.

## **Other Matters**

50. The Council and appellant agree that the Council cannot demonstrate a 5 year housing land supply. Time was spent at the Inquiry considering the extent of the shortfall based on, amongst other matters, the correct buffer and the correct household projection base date to use. The publication of the Housing Delivery Test results confirmed that Fareham is a 5% buffer Authority. The government also confirmed that it is the 2014 based household projections that should be used as the basis for calculation of the five-year requirement under the standard method. On this basis both parties agree that the minimum five-year requirement would be 2,856 in the period 2018 to 2023.
51. The updated position of the parties is thus a 3.08 years supply taking the appellants position or a 4.36 years supply if the Council's position were to be adopted. I have been provided with further supply evidence in relation to the Old Street Inquiry which calls into question some of the supply side dwellings included in the Council's figures which were permitted since April 2018. Excluding these the appellant suggests the Council's figures would drop to 4.08 years supply.
52. Whichever figures are adopted it is clear that the Council cannot identify a five-year supply of available housing land and that the shortfall is significant. The provision of additional housing in an area where there is a significant housing shortfall in my view translates into a significant positive benefit for the scheme in terms of the overall planning balance.
53. The appeal site is located where there is potential for a significant effect on a number of European designated wildlife sites which comprise Special Areas of Conservation (SACs), Special Protection Areas (SPAs) potential Special Protection Areas (pSPAs) and Ramsar sites. The proposal has been subject to Habitats Regulation Assessment and a shadow Appropriate Assessment process by the appellant. Given the requirement for further publication of environmental information in association with the Environmental Statement consultation was undertaken with Natural England as the Nature Conservation Body to ensure there was no further procedural or administrative delay at the end of the process. However, given the conclusion of my assessment of the effect of the development on the wider landscape and the designated heritage assets I am not minded to allow the appeal. On this basis an Appropriate Assessment does not need to be carried out, as it is only in circumstances where I am minded to grant consent that such an assessment is required to be undertaken. Moreover, in the interim the Framework, paragraph 177 has been amended to advise that it is not the requirement to conduct Appropriate Assessment but the conclusion that following that assessment there is an identified likely significant effect on a habitats site where the presumption in favour of sustainable development does not apply. In these circumstances this matter does not therefore affect the approach to my planning balance.

## **Benefits of the Scheme**

54. As noted above the provision of housing in an Authority area where the Council cannot identify a five-year housing supply is a significant benefit of the scheme. The Statement of Common Ground signed by the parties makes it clear that there is a significant need for affordable housing. The provision of 40% of the total number of units provided as affordable housing, secured

through the planning obligation, is therefore also a significant positive benefit of the scheme.

55. The appellant contends that there would be between 360 and 465 direct, indirect and induced jobs created by construction. It is further contended that there would be an on-going £4.1m gross expenditure per annum from future residents. It is further contended that the landscaping and ecological mitigation would improve the appearance of the harsh urban edge currently created by Bellfield. These are benefits that accrue from this development and are therefore reasonable to add as positive contributions in the planning balance. They are of a scale which reflects the scale of the development.
56. For these reasons the social benefits from additional housing and affordable housing are of significant positive weight, the economic benefits are of moderate positive weight, and the environmental benefits are of limited positive weight.

### **Planning Obligation**

57. A completed Unilateral Undertaking (UU) dated 8 November was submitted to the Inquiry before the conclusion of it sitting. The UU secures matters related to transport including the site access, travel plan and construction traffic management as well as a contribution towards sustainable transport. The UU also secures public open space provisions, including contributions; environmental and habitat obligations, including commuted maintenance and disturbance contributions and the transfer of a bird conservation area; an education contribution and obligations to protect or provide on site routes for the public. These are in effect mitigation measures or matters directly related to the development and do not amount to positive benefits.
58. The appeal is to be dismissed on other substantive issues and whilst an obligation has been submitted, it is not necessary for me to look at it in detail, given that the proposal is unacceptable for other reasons, except insofar as it addresses affordable housing.
59. In respect of affordable housing the UU secures 40% of the housing as affordable units with the mix, tenure and location controlled by the undertaking. I have already identified this as a benefit of the scheme which will be taken into account in the planning balance.

### **Planning balance**

60. I have concluded that the proposed development would result in material harm to the significance of two Grade II\* listed buildings through development in the setting of those buildings. This harm is in my view less than substantial harm in the terms of the Framework a position also adopted by both main parties. Paragraph 196 of the Framework advises in such circumstances that this should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.
61. I have identified the public benefits of the scheme above and these include the provision of additional housing in an authority where there is not a five year supply of housing land and the provision of affordable housing in an area where there is a significant need. I give these matters significant weight. Added to these would be the additional jobs and expenditure in the locality arising from construction activity and following completion of the development. Given the

scale of development these would not amount to small figures and I have ascribed this moderate weight. The proposed landscaping and biodiversity enhancements are a balance and required in the context of also providing a degree of mitigation I therefore only ascribe these limited positive weight.

62. The Framework makes it clear that when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Furthermore it advises that any harm to the significance of a designated heritage asset should require clear and convincing justification. There is a statutory duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. The courts have interpreted this to mean that considerable importance and weight must be given to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise in planning decisions.
63. Heritage assets are an irreplaceable resource and they should be conserved in a manner appropriate to their significance. The Farm House and Barn at Great Posbrook are both Grade II\* and therefore are assets of the highest significance. The development of a substantial housing estate in the rural setting of these listed buildings, and farmstead of which they form part, would materially alter the relationship of the listed buildings and farmstead to the nearby village and wider rural hinterland. This would merge the existing distinct and separated grouping of buildings with the expanding village removing that degree of separation and obscuring the historic relationship with the village and wider countryside. I would not characterise this less than substantial harm as of such limited effect as 'at the lower end' within that spectrum as suggested by the appellant. Indeed, the setting contributes to the significance of these listed buildings and their appreciation from both distinct view points and kinetic views. The negative effect would have a measurable and noticeable effect on the existing physical relationships of development in the area and thereby the understanding of the historic development of those over time. The understanding of the high status nature of the house and barn, and their significance, is derived in part from an appreciation of the separation from the village, their setting within the wider agricultural and rural hinterland as well as their size, scale, architectural quality and relationship of the buildings to each other and the surrounding development.
64. On the basis of the above I conclude that the less than substantial harm I have identified, and to which I give considerable importance and weight, is not outweighed by the significant public benefits of the scheme. On this basis I conclude that the scheme should be resisted. As the scheme fails the paragraph 196 test this would disengage the paragraph 11 d tilted balance that would otherwise have been in play given the lack of a five-year supply of housing land.
65. The scheme would be subject to the requirement to carry out an Appropriate Assessment under the Habitats Regulations if I were minded to allow the appeal. At the time of submission of the appeal Paragraph 177 of the Framework required that the presumption in favour of sustainable development, in paragraph 11, would not apply where an Appropriate Assessment was required to be carried out. The latest iteration of the Framework has amended paragraph 177 to only disengage the presumption in favour of sustainable development where the development is likely to have a

significant effect on a habitats site. If an Appropriate Assessment has concluded the development would not adversely affect the integrity of the habitats site the presumption would not be disengaged. However, given my conclusions in respect of the impact on heritage assets and the other harms I have identified I am not minded to allow the appeal and therefore I do not need to carry out an Appropriate Assessment.

66. Whilst the presumption in favour of sustainable development is not disengaged by virtue of paragraph 177 of the Framework, paragraph 11 d, the so called 'tilted balance', is disengaged by virtue of my conclusions in relation to the effect on the heritage assets and the application of 11 d i. The proposal therefore is to be considered in the context of a straight balance. Section 38(6) requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposal would result in material harm to the character and appearance of the area, which is a valued landscape, to the setting of two Grade II\* listed buildings and a minor adverse effect on best and most versatile agricultural land in the area. On this basis the proposal would conflict with policy CS14 in the LPP1 and DSP5, DSP6 and DSP40 in the LPP2.
67. The Authority cannot demonstrate a 5 year supply of housing land and policies which restrict housing development through such matters as settlement boundaries and gaps are out of date. They do not provide for the necessary housing to make provision for adequate housing in the area. However, those policies, which include CS14, CS22 and DSP6 do seek to protect the countryside and fulfil a purpose that is consistent with the Framework. The Council is seeking to address the shortfall and is making positive steps in that regard albeit there is dispute as to how successful that is. Nevertheless matters are moving forward and although there is still an outstanding shortfall, which even if I accept is as great as suggested by the appellant, is improving on historic figures and there appears to be greater opportunities for this situation to be improved further. I accept that Welbourne may well not be moving at the pace that has previously been suggested and not as quickly as the Council would suggest, but it is still moving forward and with a significant complex development of this nature matters will take time but once milestones are reached momentum is likely to quicken. Of particular relevance here is the determination of the extant application, which remains undetermined but continues to move forward. On the basis of the information before me the determination of this would be in the spring or middle of this year. Given the above I do not afford these particular policies the full weight of the development plan but I still accept that they have significant weight and the conflict with those policies that I have identified above still attracts significant weight in my planning balance.
68. I note that policy DSP5 reiterates national policy and reflects the statutory duty and is therefore accorded full weight and conflict with it, as I have found in this regard, is afforded substantial weight. 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. In the context of the harms I have identified which relate to landscape, heritage assets and best and most versatile agricultural land these result in conflicts with specific criteria in policy DSP40 for the reasons given above in respect of those matters and therefore there is conflict with the policy. These

are two significant policies where weight has not been reduced and the proposal when considered in the round is not in accordance with the development plan taken as a whole.

69. The ecological provisions payments and additional bird sanctuary are primarily mitigation requirements resultant from the proposed development and its likely potential effects and do not therefore substantively add a positive contribution to the overall balance.
70. The impact on the significance of the Grade II\* listed buildings is not outweighed by the public benefits of the scheme and therefore the additional harms related to landscape and BMVAL only add further to the weight against the proposal. The advice in the Framework supports the conclusions to resist the proposal. There are therefore no material considerations that indicate that a decision other than in accordance with the development plan would be appropriate.

**Overall conclusion**

71. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR



DOCUMENTS SUBMITTED AT INQUIRY BY APPELLANT

- APP1 Housing Land Supply Statement of Common Ground.
- APP2 Press Release dated 18 October 2018 from Fareham Borough Council.
- APP3 Appeal Decision letter APP/W3520/W/18/3194926.
- APP4 Habitats Regulations Assessment Screening & Shadow Appropriate Assessment prepared by CSA Environmental.
- APP5 Unilateral Undertaking dated 8 November 2018.
- APP6 Bundle of three Committee reports (P/17/1317/OA, P/18/0235/FP and P/18/0484/FP) confirming the Council's approach to Policy DSP40.
- APP7 Additional suggested conditions.
- APP8 Letter from Hampshire and Isle of Wight Wildlife Trust confirming their agreement to take on the land secured as the Bird Conservation Area in the Unilateral Undertaking.
- APP9 Closing submissions on behalf of the appellant.

DOCUMENTS SUBMITTED AT INQUIRY BY LOCAL PLANNING AUTHORITY

- LPA1 List of Appearances on behalf of the Council
- LPA2 Updated extract from 'The Buildings of England Hampshire: South', appendix 14b to Ms Markham's proof of evidence.
- LPA3 Conservation Area Appraisal and Management Strategy: Titchfield Abbey, Fareham Borough Council adopted sept 2013 – substitution for Core Document F11.
- LPA4 Appeal Decision letter APP/W1715/W/17/3173253.
- LPA5 Copy of Policies 1CO and 2CO from the Eastleigh Borough Local Plan.
- LPA6 Announcement from the Leader of Fareham Borough Council dated 5 November 2018.
- LPA7 S106 Obligations Justification Statement.
- LPA8 Opening submissions on behalf of the Council.
- LPA9 List of documents to be referred to during Evidence in Chief of Philip Brshaw.
- LPA10 List of documents to be referred to during Evidence in Chief of Lucy Markham.
- LPA11 Draft schedule of conditions.
- LPA12 e-mail from Strategic Development Officer Children's Services Department Hampshire County Council dated 8 November 2018.
- LPA13 Plan of route and points from which to view the site during the appeal site visit.
- LPA14 Closing submissions on behalf of the appellant.

DOCUMENTS SUBMITTED AT INQUIRY BY TITCHFIELD NEIGHBOURHOOD FORUM

- TNF1 Opening statement on behalf of Titchfield neighbourhood Forum
- TNF2 Email exchange with appellant regarding drainage dated 6 November including various attachments
- TNF3 List of documents referred to in Evidence in Chief of Mr Phelan
- TNF4 Closing Statement on behalf of Titchfeild neighbourhood Forum

DOCUMENTS SUBMITTED AT INQUIRY BY THIRD PARTIES

INQ1 Speaking note from Mr Girdler  
INQ2 Letter read out by Mr Marshal on behalf of The Fareham Society  
INQ3 Speaking note from Mr Hutcinson

DOCUMENTS SUBMITTED AFTER INQUIRY

PID1 Additional Environmental Information submitted by appellant under cover of letter dated 14 December 2018.  
PID2 Copy of Press notice of publication of Additional Environmental Information.  
PID3 Comments on Additional Environmental Information by Titchfield neighbourhood Forum.  
PID4 Comments on Additional Environmental Information by Fareham Borough Council.  
PID5 'Old Street' Appeal decision APP/A1720/W/18/3200409 submitted by Fareham Borough Council  
PID6 Fareham Borough Council comments on 'Old Street' decision.  
PID7 Appellant's comments on 'Old Street' decision.  
PID8 Natural England's (NE) consultation response on shadow Habitats Regulation Assessment as Statutory nature Conservation Body.  
PID9 Appellant's response to NE's consultation response (PID8) including an updated shadow Habitats Regulation Assessment.  
PID10 Titchfield neighbourhood Forum's response to NE's consultation response (PID8)  
PID11 Titchfield Neighbourhood Forum's comments on the Housing Delivery Test (HDT) results and the changes to the National Planning Policy Framework (the Framework).  
PID12 Fareham Borough Council's comments on the HDT results and the changes to the Framework.  
PID13 Appellant's comments on the HDT results and the changes to the Framework.  
PID14 Titchfield Neighbourhood Forum's final comments on HDT and Framework  
PID15 Appellant's final comments on HDT and Framework.

END



## Appeal Decision

Inquiry Held on 24 to 26 September 2019

Site visits made on 23, 25 and 26 September 2019

**by Grahame Gould BA MPhil MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 5 November 2019**

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**Appeal Ref: APP/A1720/W/19/3230015**

**Land to the east of Downend Road Portchester**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Miller Homes against the decision of Fareham Borough Council.
  - The application Ref P/18/0005/OA, dated 2 January 2018, was refused by notice dated 26 April 2019.
  - The development proposed is described as 'Outline planning application with all matters reserved (except the means of access) for residential development, demolition of existing agricultural buildings and the construction of new buildings providing up to 350 dwellings; the creation of new vehicular access with footways and cycleways; provision of landscaped communal amenity space, including children's play space; creation of public open space; together with associated highways, landscaping, drainage and utilities'.
- 

### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Miller Homes against Fareham Borough Council. That application is the subject of a separate Decision that will follow the appeal decision.

### Preliminary Matters

3. The Inquiry sat for three days between 24 to 26 September 2019. I made what the Planning Inspectorate refers to as an 'access required' visit to the site on 25 September when I was granted access to enter and view the site, rather than being accompanied by representatives for the appellant and the Council. I also made unaccompanied visits to the area within the vicinity of the appeal site on 23 and 26 September.
4. While the Inquiry finished sitting on 26 September, I adjourned it, as opposed to closing it to allow for the submission of: a certified copy of an executed Section 106 agreement (S106); the appellant's and the Council's closing submission in writing; some documents referred to by the parties in evidence (inquiry documents [IDs]); a final version of the inquiry position statement; and the appellant's written application for costs and the Council's response to that application. The Inquiry was closed in writing on 21 October 2019.

5. The S106 was received by the Planning Inspectorate on 3 October 2019 and it contains planning obligations concerning:
- the provision of 40% affordable housing within the development;
  - the implementation of improvements to the Cams bridge;
  - the undertaking of off-site highway works for alterations at the railway bridge in Downend Road and on the A27;
  - the payment of contributions for various off-site highway and transportation improvements and the implementation of an occupiers travel plan;
  - the provision of and the payment of maintenance contributions for public open and play space;
  - the payment of a contribution to mitigate the development's effects on off-site designated habitats; and
  - the payment of a contribution for school facilities in the area.

### **Main Issues**

6. The main issues are:
- whether the development would make adequate provision for pedestrian access via Downend Road and the effects of providing pedestrian access on the operation of Downend Road;
  - whether there would be accessibility to local services and facilities for the occupiers of the development by a range of modes of transport; and
  - the effects of the development on the integrity of the Portsmouth Harbour Special Protection Area and Ramsar Site, the Solent and Southampton Special Protection Area and Ramsar site and the Solent and Dorset Coastal Potential Special Protection Area (the designated habitats).

### **Reasons**

#### *Pedestrian access via Downend Road and effects on the operation of Downend Road*

7. Having regard to the wording of part a) of the reason for refusal, ie pedestrian use of Downend Road and any subsequent implications for the 'safety' of and 'convenience' of users of this road, and the evidence put to me, there are various matters that come within the scope of the consideration of this main issue. Those matters, which I consider below in turn, being: the pedestrian routes that would be available to occupiers of the development; the pedestrian demand (movements) and the distribution of those movements amongst the pedestrian routes; and the options for and effects of altering the railway bridge in Downend Road to accommodate the pedestrian movements arising from the development.
8. Inevitably there is some overlap between the matters of pedestrian movements and their distribution to be consider under this issue and the

wider accessibility to services and facilities that concerns the second main issue that I have identified.

Proposed pedestrian routes

9. The development would involve the construction of 350 dwellings to the north of a railway line, just beyond part of Portchester's established residential area. The development would have three pedestrian routes to and from it and they would be via: Downend Road, the westernmost of the routes (route A); Cams bridge, the central route (route B); and Upper Cornaway Lane, the easternmost route (route C).
10. Cams bridge crosses the railway line and currently provides access between the site and a small vehicle repair garage and The Thicket, the latter being a residential street. Separately planning permission has been granted for upgrading works to the Cams bridge to facilitate its use as a pedestrian route for occupiers of the appeal development. On the southern side of Cams bridge there is a tarmacked track leading off The Thicket. With the upgrading of Cams bridge route B would be a pedestrian route of an essentially urban character.
11. Route C would in part be reliant on the use of an unsurfaced, one metre wide and 200 metre or so length of a public right of way (footpath PF117), and Upper Cornaway Lane, a street providing access to the crematorium and some chalet type homes. Given the rural character of FP117 and its current suitability only for recreational use, some widening and surfacing works would be undertaken to it to enable it to be used more easily by residents of the proposed development.
12. Downend Road can be characterised as being a local distributor road<sup>1</sup>, with a two-way, daily flow of the order of 6,800 vehicles per day<sup>2</sup>. Pedestrians using route A and travelling to and from destinations south of the railway line would have to cross the railway bridge in Downend Road, following some alterations to the bridge being made, which are referred to in more detail below. That railway bridge has variously been described as providing a north/south or east/west crossing of the railway line and I shall hereafter only refer to it as an east/west crossing of the railway line and to drivers making eastbound or westbound crossings of the bridge. On the railway bridge and westbound of it, as far as the junction with the A27, Downend Road is subject to a 30mph speed limit. Immediately eastbound of the railway bridge the speed limit increases to 40mph.
13. In terms of accessing places of work and education, shopping and leisure facilities, public transport (Portchester railway station and bus stops along Portchester Road [A27]) and other services and facilities etc, it is agreed that some occupiers of the development would walk to and from the previously mentioned destinations. However, there is disagreement about the scale of the pedestrian demand and how it would be distributed amongst the three routes.

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<sup>1</sup> Paragraph 6.24 of Mrs Lamont's PoE

<sup>2</sup> Table 2.1 within Mr Wall's proof of evidence and paragraph 41 of Mr Litton's closing submissions for the appellant (ID21)

The pedestrian demand (movements) and the distribution of those movements

14. The appellant's most up to date estimate of the total daily pedestrian demand generated by the development would be nearly 700 movements per day, inclusive of walking trips to access buses and trains, 26.6% or so of all daily trips arising from the development<sup>3</sup>. By contrast the Council estimates that the number of daily single mode walking trips would be of the order of 284 trips, ie origin to destination trips excluding the use of buses or trains (CD10A). The parties agree for the purposes of estimating the development's pedestrian demand that data from the national travel survey 2018 (NTS2018) should be used to establish all trip generation, mode share and journey purpose. It is further agreed that the 2011 Census data should be used to determine the development's population.
15. However, there is disagreement between the appellant's and the Council's transportation witnesses<sup>4</sup> as to what flexibility should be used in applying the acceptable walking distance guidance stated by the Chartered Institution of Highways and Transportation (CIHT) in its guidelines for the 'Provision for journeys on foot' (CIHT2000 [CD25]). There is also a difference of opinion as to whether the mode share for walking to work recorded by the Census, ie 52% of the national level, should be used as a proxy when considering the propensity for all walking trips arising from the development. The consequence of those disagreements being whether local places of work, schools, shopping facilities etc would or would not be within walking range of the development, having regard to the alternatives offered by the three routes.
16. Mr Wall for the appellant is of the view that the suggested acceptable walking distances set out in Table 3.2 of CIHT2000 are dated and are being too rigidly applied by Mrs Lamont for the Council. The guidelines set out Table 3.2 are:

	Town centres (metres)	Commuting/school and sightseeing (metres)	Elsewhere (metres)
Desirable	200	500	400
Acceptable	400	1,000	800
Preferred Maximum	800	2,000	1,200

17. While it has been suggested that the acceptable walking distance guidelines stated in CIHT2000 are dated, given that they are nearly 20 years old, that concern does not seem to be borne out by the information contained within Table NTS0303 contained within NTS2018<sup>5</sup>. That is because between 2002 and 2018 the average walking trip length has remained constant at 0.7 miles (1.12 Km), while walking trips over a mile (1.6 Km) have consistently been of an average length of around 1.4 miles (2.25 km). Those national survey results suggest that individuals' attitudes towards walking trip

<sup>3</sup> Page 2 of CD10A and Paragraph 2.3.9b of Mr Wall's PoE

<sup>4</sup> Mr Wall for the appellant and Mrs Lamont for the Council

<sup>5</sup> Page 4 Appendix 1 of Mrs Lamont's PoE

lengths have not altered appreciably and that there is no particular issue with the currency of the guidance contained in Table 3.2 of CIHT2000.

18. In any event were the guidelines stated in CIHT2000 thought to be out of date, then I would have expected the CIHT to have revised them, either by issuing an amended version of CIHT2000 or publishing an entirely new document. Neither of those courses of action have been initiated by CIHT, with the publication of its 'Planning for Walking' guidance in 2015 (CD27 – CIHT2015) appearing to have provided an obvious opportunity for replacement acceptable walking distance guidelines to have been introduced. Instead CIHT2015 makes cross references to CIHT2000 in sections 4 and 6, which I consider to be a strong indication that CIHT was of the view that irrespective of the age of its acceptable walking guidelines, they continued to have currency. Mr Wall in giving his oral evidence stated that he was unaware of the CIHT undertaking any current review of CIHT2000.
19. Regardless of a walking trip's purpose the appellant contends that an upper ceiling distance of 2.4 Km (1.5miles) should be used. However, setting such a distance is inconsistent with what is stated in CIHT2000 and the average walking trip lengths reported in the NTS2018 and I therefore consider it should be treated with some caution. The wider disagreement about the overall number of pedestrian movements that would be generated is something I shall return to in providing my reasoning for the second main issue. However, in the context of the consideration of the utility of route A, I consider that the walking trips of most significance would be those to and from Cams Hill Secondary School (the school) and the Cams Hall employment site (CHes). That is because the school and the CHes would or would very nearly meet the 2,000 metre preferred maximum distance guideline for walking journeys for schools and commuting stated in CIHT2000.
20. As it is highly unlikely that route C would be used to get to or from either the school or the CHes, there is no need for me to make any further reference to it in considering this main issue.
21. The parties are now agreed that the development would generate 35 or 36 pedestrian crossings of the Downend Road bridge per day, an increase of between 83% and 86% on the present situation<sup>6</sup>. Of the new crossings there is agreement that 24 would be for the purpose of travelling to and from the school. However, unlike the Council, the appellant contends that no use of route A would be made by commuters walking to or from a place of work<sup>7</sup>.
22. There is some disagreement as to whether the CHes would be 2,000 or 2,100 metres from the development. I consider that a 100 metre (5%) difference would not act as a significant deterrent for pedestrians using route A. That is because the time to walk an extra 100 metres would not be great and for a walker using either routes A or B and it would probably be necessary to time the duration of the alternative walking trips to be aware of any meaningful difference between them. Having walked routes A and B, and presuming that a safe pedestrian crossing for the Downend Road railway bridge would be available, I consider that qualitatively there would be very little to differentiate route A from B. I also consider there would be potential

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<sup>6</sup> Page 5 of CD10A

<sup>7</sup> In the zero entry against commuting/business trips in the upper table and supporting text on page 3 of CD10A and in Tables 10 and 11 included in Appendix C to Mr Wall's PoE

for commuters walking between the development and the CHes to vary their routes, to avoid monotony, and to use either route A or B. I am therefore not persuaded that route B would automatically be favoured ahead of route A by those walking to and from the CHes.

23. So, unlike the appellant, I consider it incorrect to discount commuters from walking to or from CHes via route A. I therefore consider that there would be potential for more pedestrian use of Downend Road rail bridge than has been allowed for by the appellant. I also consider that as there is access to the circular countryside public footpath route just beyond the railway bridge that there would be potential for additional recreational walkers, originating from the existing built up area, to be drawn to Downend Road resulting in some additional crossings of the bridge. That is because the provision of enhanced pedestrian facilities would make it safer to cross the bridge and the bridge's existing condition may well be acting as a detractor for recreational walkers.

The five options considered at the application stage for altering the Downend Road railway bridge

24. To accommodate additional pedestrian crossings of the railway bridge in Downend Road there is no dispute that alterations would need to be made to this bridge. That is because the existing bridge only provides a very rudimentary refuge for pedestrians, in the form of a very narrow margin, tantamount to a 'virtual footway', that comprises a strip of tarmac demarcated by a white painted line.
25. To address the additional demand for pedestrian crossings of the bridge the appellant when the appealed application was originally submitted put forward three options for alterations (options 1 to 3). Option 1 would involve the introduction of a formalised virtual footway and has been discounted by Hampshire County Council (HCC). Option 2 would involve the provision of a 1.2 metre wide traditional (raised) footway, with a carriageway width of around 4.8 metres. Option 3 would involve the provision of a 2.0 metre wide footway and a reduction in the width of the carriageway to form a single lane of 3.5 metres and would involve the introduction of a shuttle working arrangement, with the signed priority being in favour of the eastbound stream of traffic. HCC in offering its advice to the Council<sup>8</sup> expressed no preference for either options 2 or 3, with it stating that the final decision on which option should be pursued being deferred until a post planning permission public consultation exercise had been completed.
26. Following the decision of the Council's planning committee to defer the determination of the appealed application in order to enable further consideration to be given to the alteration of the railway bridge, two further options were put forward by the appellant. The first of those, option 4, would be similar to option 3, albeit than in substitution for signed priority vehicles would be controlled by traffic signals. HCC are reported as raising no in principle concern with option 4, albeit it indicated that this option would entail greater driver delay, including unnecessarily during off peak periods, and a maintenance liability, such that options 2 and 3 remained preferable to the highway authority<sup>9</sup>.

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<sup>8</sup> Letter of 29 August 2018 (contained within CD2)

<sup>9</sup> Paragraph 3.2.6 in the i-Transport Technical Note of 28 February 2019 and entitled 'Downend Road Railway Bridge – Review of Pedestrian Options' (CD29)

27. Option 5 would involve no footway provision, with the carriageway available to vehicles crossing the bridge travelling in opposite directions at the same time being 5.0 metres. There would also be 300mm wide margins to protect the parapets on each side of the bridge<sup>10</sup>. Additionally, traffic signals would be installed so that when pedestrians sought to make a bridge crossing they would initiate an all red phase for both eastbound and westbound drivers, making the bridge a pedestrian only area for so long as pedestrians were crossing it. HCC are reported as considering option 5 to be a unique and unsafe means for controlling shuttle working at the bridge and rejected it (CD2<sup>11</sup>). However, HCC's advice to the Council concerning Option 5 appears to have been on the basis that it would involve shuttle working, as opposed to two way working. In this regard HCC is reported as commenting:

*'As such drivers unfamiliar with the site may not expect opposing vehicles to be on the bridge at the same time (both directions on a green signal). This situation is exacerbated by the carriageway width on the bridge which in this controlled situation would encourage drivers to take a more central position in the carriageway. Consequently vehicles may meet each other on the bridge'.* (Appendix 2 of committee report of 24 April 2019 [CD2])

However, HCC's comments regarding option 5 appear to have been made on an erroneous basis, with it having put forward as an alternative to shuttle working. It is therefore unclear what HCC's views on option 5 would have been had it not been treated as being an 'unconventional arrangement'<sup>12</sup>, given its apparent misunderstanding about what this option would entail. It would also appear that the appellant did nothing to bring this misunderstanding to HCC's attention.

28. The Council's determination of the planning application was therefore based on options 2 and 3 being for its consideration and it contends that option 2 would be unsafe for pedestrians, while option 3 scheme would unacceptably affect the safety and convenience of road users. I now turn to the detailed consideration of options 2 and 3.

#### Option 2

29. The railway bridge provides poor facilities for pedestrians crossing it. I recognise that in general terms the provision of a 1.2 metre wide footway on the Downend Road bridge under option 2 would represent an improvement in safety terms compared with the prevailing situation, however, I consider that cannot reasonably be said of the post development situation. That is because the development would be a significant new generator of vehicles crossing the bridge, with the parties agreeing that the development would give rise to a 22% increase in traffic flows on the bridge<sup>13</sup>. Those extra bridge crossings is something that needs to be accounted for when considering whether option 2 would provide a safe environment for the existing and prospective pedestrian users of the bridge.

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<sup>10</sup> As clearly depicted in the cross section contained in Image 3.2 and drawing ITB12212-GA contained in CD29

<sup>11</sup> The summary of HCC's comments to the Council included as Appendix 2 of the Council's committee report of 24 April 2019

<sup>12</sup> Paragraph 3.3.6 in CD29

<sup>13</sup> Page 5 of CD10A

30. I am of the view that a 1.2 metre wide footway under option 2 would not provide a safe bridge crossing facility for pedestrians, having regard to both the increases in vehicular and pedestrian crossings of the bridge, with the development being a new origin/destination for both categories of travellers, particularly during the peak hours for the making of commuting trips and/or school journeys. It is also likely that the pedestrians using the bridge would be likely to be a mixture of adults and school aged children. Given that the demand for additional bridge crossings would largely come from commuters and school children, I consider that activity would be more likely to coincide with AM and PM peaks and would not be evenly spread throughout the day. In saying that I recognise that working hours can be staggered and out of teaching hours' activities occur at schools, but those activities would only give rise to some walking trips for occupiers of the development outside the core peak hours.
31. Having regard to the guidance on footway widths stated in the Department for Transport LTN1/04 'Policy, Planning and Design for Walking and Cycling'<sup>14</sup> and Manual for Streets (MfS - CD23), a footway of 1.2 metres width would be considerably narrower than the generally preferred minimum 2.0 metres referred to in paragraph 6.3.22 of MfS. While the guidance is not expressed in absolute terms the footway to be provided as part of option 2 would potentially be used by a variety of pedestrians, ie adults, children, with or without any impairment. However, a footway of 1.2 metres in width would only just be wide enough for an adult and a child to walk side by side, but would not accommodate two adults with a push chair walking side by side in the same direction or an adult and a wheelchair user side by side, based on the details provided in figure 6.8 of MfS.
32. Regard also needs to be paid to pedestrians travelling in opposite directions wishing to cross the bridge at the same time. In that regard I recognise that as far as pedestrians travelling from or to the development in the peak hours are concerned the bulk of those users would be travelling in the same direction and that this demand for the footway's use would not generate opposing movements. However, there are already users of the bridge and many of them will be making trips across the bridge in the opposite direction to pedestrians leaving or returning to the development. There would therefore be potential for opposing crossings of the bridge to be made at the same time, creating a conflict situation. I consider it cannot be assumed that when directional conflicts arose that one party would give way to the other and with such a narrow footway that would make the use of the carriageway a possibility, bringing pedestrians into conflict with vehicles.
33. Under the prevailing situation, I observed cars frequently encroaching beyond the centre line on the bridge whether there were or were not any pedestrians on the bridge. My seeing cars crossing over the centre line irrespective of whether pedestrians are crossing the bridge is also consistent with the screenshot images included in the appellant's evidence, for example those in appendix A of the appellant's Technical Note of 28 February 2019. All of which is also consistent with the advisory road signs on either side of the bridge warning of oncoming vehicles being in the middle of the road.

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<sup>14</sup> Appendix X to Mr Wall's PoE

34. I therefore find difficult to envisage how that driver behaviour would not continue to be replicated with an increased number of vehicular crossings of the bridge, following a reduction in the carriageway width for vehicles under option 2. That in turn could result in eastbound vehicles needing to mount the footway or their nearside wing mirrors encroaching into the space above the footway. So, under a scenario of vehicles crossing in opposing directions at the same time as pedestrians were also making use of the bridge there would be the potential for the safety of pedestrians to be unacceptably prejudiced.
35. The appellant has sought to justify the provision of a 1.2 metre wide footway, on the basis of having undertaken a 'Fruin' assessment, to judge the level of service this footway would afford its users. However, the extract of the paper written by Mr Fruin submitted at the inquiry (ID5<sup>15</sup>) refers to 'channel's (footways) upwards of 1.8 metres (6 feet) in width having been assessed. I therefore consider that the Fruin methodology has very limited applicability to a footway under option 2 that would be two thirds of the width of the footway referred to in ID5. I therefore find this aspect of the appellant's case does not justify the provision of a 1.2 metre wide footway.
36. While other instances of narrow footways at bridges/archways in Hampshire have been drawn to my attention in evidence<sup>16</sup>. However, those examples do not appear to be directly comparable with the appeal proposals and in any event it is the acceptability of otherwise of the latter that I need to consider.
37. I also find it surprising that HCC considers a 1.2 metre wide footway would be appropriate on a road subject to around 6,750 daily vehicle movements, when the appellant is intending the main and secondary estate roads within the development would have 2.0 metre footways<sup>17</sup>.
38. I therefore consider that option 2 should be discounted as an appropriate alteration to the Downend Road railway bridge for safely accommodating the additional pedestrian use of the bridge that would arise from the development.

### Option 3

39. The appellant's modelling of the effect of option 3's operation traffic flows is heavily reliant on the use of the 'ARCADY' software, that software normally being used to assess the operation of roundabouts. In this instance ARCADY has been set up with a 'dummy arm' as a work around to simulate the operation of eastbound priority shuttle working at the railway bridge. Using ARCADY, the appellant has estimated that in the AM peak hour, the average queue length would be 3.3 vehicles amounting to a delay of 23 seconds<sup>18</sup>.
40. I have never previously come across ARCADY being used for any purpose other than modelling the operation of roundabouts. I therefore find it surprising that HCC, in providing its comments to the Council (included in CD2), did not question ARCADY's use in assessing the operation of shuttle working at a bridge. I consider it unsurprising that the Transport Research Laboratory (TRL), as the developers/product owner of ARCADY, has cast significant doubt on the suitability of its model for assessing a scenario such

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<sup>15</sup> Designing for pedestrians a level of service concept

<sup>16</sup> Appendix X of Mr Wall's PoE and ID11

<sup>17</sup> Paragraph 2.4.2 of the Transport Assessment (CD15)

<sup>18</sup> Page 9 of CD10A

as option 3 because of an issue of dealing with `... the lag times once a vehicle is in the narrowing ...'<sup>19</sup>. So, while HCC appears to have voiced no concerns about ARCADY's suitability, I consider that very little weight should be attached to it for the purposes of assessing the effect of option 3 on the safe and free operation of Downend Road. I also consider it of note that TRL has stated that its PICADY modelling tool, which is designed to model the operation of priority junctions, is also unsuitable for modelling option 3, with TRL referring to its TRANSYT traffic signal software as being more suitable<sup>20</sup>, albeit still something of a work around.

41. In response to the limitations of the appellant's modelling of option 3, the Council has used microsimulation software to assess the operational effects of option 3. That software 'Paramics Discovery Version 22' (PDV22) being a microsimulation model that includes a module, introduced around six months ago<sup>21</sup>, and which has a specific module capable of modelling road narrowings<sup>22</sup>. As a worst case the Council's running of PDV22 predicts that during the AM peak period queues of up to 36 vehicles might extend back from the westbound vehicle give way point and result in westbound traffic being delayed by up to 17 minutes<sup>23</sup>.
42. Given the recent introduction of PDV22 its track record is limited and the appellant has raised concerns about the reliability of PDV22. In that regard it has been argued that the Council's running of PDV22 has not been correctly calibrated for the circumstances of option 3 and that its output results cannot be validated. Mr Wall in cross examination contended that PDV22 appears to have been developed without being informed by driver behaviour. However, producing a model that was incapable of replicating driver behaviour would seem a nonsensical exercise for the product supplier. Given that PDV22 has been developed to assess the operation of a highway under the circumstances of vehicles in one flow giving way to an opposing flow of vehicles at a road narrowing, I consider that very little weight should be attached to the proposition that this software had been developed without regard to driver behaviour.
43. Mr Wall is not a 'modelling expert'<sup>24</sup> and has placed some reliance on the findings of a study undertaken by the TRL for the Department of Transport to support his use of ARCADY and to critique the Council's running of PDV22. The findings of the TRL study were reported in 1982 in a paper entitled 'The control of shuttle working on narrow bridges' (TRL712)<sup>25</sup>. To assist with critiquing the running of PDV22 the appellant has engaged a consultancy specialising in microsimulation modelling, Vectos Microsim Limited (Vectos), and a video file of the model runs Vectos has performed, as well as written advice it has given to the appellant, has been submitted as part of the appellant's evidence<sup>26</sup>. In response to the critique of PDV22 the Council has supplemented its evidence through the submission of a video file for its

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<sup>19</sup> Email from Jim Binning of TRL to Mayer Brown of 23 August 2019, included in Appendix RVL4 appended to Mrs Lamont's rebuttal statement

<sup>20</sup> Email from Jim Binning of TRL to Mayer Brown of 9 August 2019, included in Appendix RVL4 appended to Mrs Lamont's rebuttal statement

<sup>21</sup> Mrs Lamont in during cross examination

<sup>22</sup> Matter of agreement stated on page 8 of CD10A

<sup>23</sup> Mrs Lamont's rebuttal statement

<sup>24</sup> Email of 23 September 2019 to the Planning Inspectorate from Mrs Mulliner on the appellant's behalf

<sup>25</sup> Appendix K to Mr Wall's PoE

<sup>26</sup> Appendix P to Mr Wall's Rebuttal Statement, Note from Vectos of September 2019 entitled 'Paramics modelling - comments on Sysra review and Mayer Brown rebuttal', ID12 and ID15

- running of PDV22 and written comments from the software's developer, Systra<sup>27</sup>.
44. For the AM peak period and using PDV22 the appellant estimates that the average westbound queue length would be 6.5 vehicles, with the average delays westbound and eastbound respectively being 43 and 10 seconds<sup>28</sup>.
  45. The disagreement about whether the running of PDV22 has reasonably represented the operation of option 3, essentially revolves around the behavioural response of westbound drivers to the signed priority and whether that response would cause significant queuing and driver delays. In that regard the appellant contends that the signed priority has been modelled too rigidly and would not be reflective of actual driver behaviour. It is therefore argued that the Council's prediction of the severity of the westbound queuing and delay times would be unrealistic. That is because TRL712 records that when signed priority shuttle working is in place drivers that do not have the priority only give some measure of preference to drivers in the opposing stream. That resulting in drivers without the priority experiencing around 65% of any delay, while the opposing drivers experience around 35% of any delay.
  46. While the appellant has sought to attach significant weight to the findings reported in TRL712, this report of study provides very little information about the computer modelling that was performed and the frequency and duration of the observations of driver behaviour that was undertaken at the two bridge locations that were used.
  47. With respect to the computer model referred to in TRL712, were that model to be of wider utility than just perhaps for conducting this study, I would have expected that it would be known to HCC and could have been drawn to Mr Wall's attention during the pre-application and/or application discussions that took place. I say that because within Hampshire road narrowing at bridges/archway is not uncommon, given the examples cited in Mr Wall's evidence and my own observations in determining various unrelated appeals elsewhere in this county. In a similar vein when the previously mentioned email exchange took place between representatives of the TRL and a colleague of Mrs Lamont about software suitability, if the model used in the 1982 study was of utility today then the TRL could have drawn it to the attention of Mrs Lamont's colleague. Instead of that there is reference to the TRL planning to develop new software to model shuttle working. Whatever form the model used in 1982 took, given the advances in computing that have occurred in the last 37 years, it is unlikely it would bare comparison with modern day software.
  48. With respect to the bridge locations used in the 1982 study, in the final paragraph in section 3.2 of TRL712 it is stated that traffic flow rates at the bridges and the proportions of traffic crossing the bridges in each direction were different. Those differences could have had implications for the observed driver behaviour that was used to validate the output from the running of the model used in this study.
  49. In the time since TRL712's publication there have been significant changes in vehicle technology, most particularly in terms of braking and engine

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<sup>27</sup> Mrs Lamont's Rebuttal Statement, including Appendix 3, ID9, ID10 and ID14

<sup>28</sup> Page 9 of CD10A

technology, which have implications for acceleration and deceleration rates. Vehicle performance is now very different and would not necessarily be reflected in the modelling undertaken as part of the 1982 study. I am therefore doubtful as to whether the acceleration rates used for the purposes of a study undertaken in 1982 can be relied upon today.

50. With respect to the observance of priority signage, much has been made of the Council's PDV22 model runs being too cautious, with it being argued that the modelled driver behaviour would be more akin to that of 'strictly enforced' priority in the language of TRL712. However, option 3 would entail the installation of 'give way' lines and signage clearly indicating that drivers should give way to on-coming traffic. That signing arrangement would in effect be very similar to what is found in the case of a side road forming part of a 'priority junction' where give way signage and road markings are in place, which are routinely observed without strict enforcement. I consider normal driver behaviour is to observe the instructions or warnings appearing on traffic signs, whether they be of a prohibitive or warning type.
51. I therefore consider it reasonable to expect that westbound drivers faced with priority give way signage would take heed of that signage and thus approach the bridge with caution and would avoid commencing a crossing if there was any doubt that it could not be completed safely. So, on approaching the give way point and when there were no eastbound vehicles on the bridge, a driver would need to decide whether there would be enough time to complete a crossing of the bridge before encountering a vehicle travelling in the opposing direction.
52. There is some disagreement as to how much time a driver would deem necessary to make a safe crossing of the bridge, with it also being argued that in working out the time needed westbound drivers would also make a calculation as to whether their crossing of the bridge would unreasonably delay an eastbound vehicle's crossing of the bridge. It being argued, in line with findings reported in TRL712, that if a westbound driver decided its actions would delay an eastbound vehicle then the former would not proceed.
53. In terms of the decision making to be made by westbound drivers, I consider the normal behaviour would be to decide whether a crossing could safely be made, with any decision making about whether their actions would cause delay for a driver travelling in the opposite direction only being a secondary concern. That is because while a westbound driver would be able to judge how long they would need to cross the bridge, they would be unlikely to be able to make the calculation when precisely an eastbound vehicle would arrive at the point where its driver would want to commence its crossing and what any delay caused to the driver of the eastbound vehicle would be.
54. I recognise that some westbound 'platooning' would be likely to arise. That is one vehicle or a group of vehicles following immediately behind another/other westbound vehicle/vehicles already crossing the bridge, irrespective of whether there might be an eastbound vehicle waiting to make a crossing of the bridge. However, I consider the number of vehicles making crossings during an individual platooning event would not necessarily be as great as argued by the appellant. That is because there would come a point at which a westbound driver would decide to observe the priority signage, rather than continue a sequence of not observing it, given that being behind a line of

crossing vehicles it would not necessarily be possible to see whether an eastbound vehicle with priority was waiting to make a crossing. So, while some platooning would arise and would have the potential to reduce westbound queuing and delays, I am not persuaded its occurrence and delay reducing potential would be of the significance claimed by the appellant.

55. As I have indicated above there is very limited information contained within TRL712 about the precise nature of the observation of drivers at narrow bridges, ie how many times driver observations were undertaken and how long they were. I therefore have concerns about driver delay under option 3 being applied on the basis of 35% and 65% respectively for drivers with and without the signed priority, as per the finding reported in TRL712. That being something the appellant has done in critiquing the Council's running of PDV22 to arrive at its finding that if this software is used then in the AM peak period the average westbound queuing length would be 6.5 vehicles and the delay would be of the order of 43 seconds<sup>29</sup>. The Council's review of the appellant's running of PDV22 suggests that the average maximum westbound queue length could be around 20 vehicles at 07:50 AM (ID10).
56. However, it appears that an unintended consequence of the appellant's rebalancing of the priority to replicate a 35%/65% delay split, is the build-up of eastbound queuing in the absence of much westbound traffic, as is apparent from the 07:46:25 screenshot contained in ID9B. Additionally, vehicles travelling in opposing directions crossing the bridge at the same time would appear to have arisen, as shown in some of the screenshots contained in ID9B.
57. For all of the reasons given above I am therefore not persuaded that much weight should be attached to the findings reported in TRL712 for the purposes of calibrating or validating runs for either PDV22 or for that matter ARCADY.
58. It is contended that the PDV22 model runs undertaken by the Council have been incorrectly calibrated. However, the review of those runs undertaken by Systra has not highlighted any fundamental errors in the way its model has been built and run on the Council's behalf. I am therefore inclined to attach greater weight to the commentary on the model's running provided by Systra than Vectos. That is because Systra, as software designer, could be expected to know precisely what its model is intended to do and whether its running by a 'client' has been appropriate, when consideration is given to the parameters needed to run the software.
59. While PDV22 is a new model and may well become subject to some refinement as more use is made of it, on the basis of everything put to me in evidence about it, I consider its use is more appropriate to that of ARCADY. That is because PDV22 has been designed to address narrow road situations, ARCADY is intended to model circulatory road movements and the TRL has advised that ARCADY is not an appropriate tool to model the operation of option 3.
60. While the queuing and delays under option 3 predicted by the Council's running of PDV22 may be somewhat exaggerated, I consider no reliance should be placed on the appellant's ARCADY assessments. In practice the effect on the flow of traffic associated with option 3's introduction would be

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<sup>29</sup> Page 9 of CD10A

likely to somewhere between the range of the results yielded by the appellant's and the Council's running of PDV22. That would be likely to result in queue lengths and driver delay exceeding the AM peak period occurrences that HCC found to be unacceptable when it concluded that the traffic light controlled option 4 would be unacceptable, ie mean maximum queuing of nine vehicles and delays westbound and eastbound respectively of 36.8 and 32.4 seconds<sup>30</sup>.

61. On the basis of the evidence before me I consider that the introduction of option 3 would result in unacceptable levels of queuing and delay for vehicular users of Downend Road.
62. The Council contends that the visibility splay falling within land within the appellant's control would be inadequate for drivers turning right from the development's access onto Downend Road. While a visibility splay that would be fully compliant with the most recent guidance, ie that contained in ID6<sup>31</sup>, would encroach onto third party land, that land comprises undeveloped land, including a ditch. It is therefore unlikely that any development would arise within the third party land, so close to the edge of the highway, as to affect the visibility for drivers emerging from the development's access. I therefore consider that there would be adequate visibility for drivers turning right out of the development's access and that 'edging out' type movements would be unlikely to cause any significant conflicts between drivers emerging from the site access and westbound road users approaching to the give way point proposed under option 3.
63. Concern has also been raised that the introduction of option 3 would adversely affect the vehicular access used by the occupiers of 38 Downend Road (No 38). No 38 lies immediately to the south of the railway line and has a double width dropped kerb providing access to this dwelling's off-street parking. The visibility for drivers emerging from No 38 is already affected by the railway bridge's parapet.
64. The works associated with the implementation of option 3 would have some implications for the manoeuvring for drivers turning right from No 38. However, I consider the new situation would not be greatly different to the existing one and introducing a shuttle working layout would have very little effect on the forward visibility for vehicles emerging from No 38 because there would be no alterations to the railway bridge's parapet. Regard also needs to be paid to the fact that in any given day the number of vehicle movements associated with No 38's occupation would be quite limited, given this access serves a single property. I consider it of note that the safety auditing that has been undertaken to date has not highlighted any particular safety concerns for vehicles emerging from No 38's access associated with the design of option 3.
65. I am therefore not persuaded that the introduction of option 3 would have any adverse effect on the use of No 38's access.

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<sup>30</sup> Table 3.1 in CD29

<sup>31</sup> Junction visibility extract from Design Manual for Road and Bridges CD123 Revision 0 (August 2019)

Conclusions on pedestrian access via Downend Road and effects on the operation of Downend Road

66. For the reasons given above I found that the 1.2 metre wide footway to be provided as part of option 2, would not provide a safe facility for its users.
67. Option 3 through the narrowing of the carriageway to 3.5 metres would provide a safe pedestrian route. However, the narrowing of the carriageway would be likely to result in vehicle queuing and delay during the AM peak period. The precise degree of that queuing and delay is the subject of considerable disagreement, with it having proved quite difficult to model. That is because when Mr Wall prepared the original transport assessment (CD15) there appears to have been no readily available software capable of modelling a road narrowing such as that envisaged under option 3. That led to the use of ARCADY, which as I have explained above, I consider cannot be relied upon, not least because the TRL has stated that it is not suited to modelling shuttle working. In connection with presenting its appeal case the Council has used the comparatively new and not widely tested PDV22, the running of which suggests that considerable vehicle queuing and driver delay could be encountered by westbound vehicular traffic.
68. The appellant has sought to persuade me that the results from the Council's running of PDV22 should not be relied on because it has been set up to run with parameters that are exaggerating vehicle queuing and driver delay because the observation of the signed priority by westbound traffic has been too rigid. The appellant's critique of PDV22 in no small measure relies on computer modelling and behavioural observations at narrow bridges undertaken in connection with the TRL712 study dating back to 1982. However, for the reasons I have given above I have significant reservations about how meaningful the findings reported in TRL712 are today.
69. I recognise that the Council's running of PDV22 may have generated unduly pessimistic queuing lengths and delay times. That said I consider more credence can be attached to the Council's running of PDV22 than either the appellant's running of ARCADY or the appellant's modified running of PDV22, the latter understating the reasonable observance of the signed priority that would underpin the functioning of option 3. The degree of vehicle queuing and driver delay would probably be somewhere between levels estimated through the appellant's and the Council's running of PDV22. Given that the scale of the delay may well exceed that which led HCC to believe that a traffic light variant of option 3, ie option 4, should be discounted. I therefore consider that option 4 may well have been prematurely discounted by HCC. That is because HCC accepted option 3 as being a safe and efficient option, based on modelling reliant on the use of ARCADY.
70. Much has been made of HCC being accepting of both options 2 and 3, but as I have said above, I consider those options have pedestrian safety and capacity shortcomings. I am not persuaded, on the evidence available to me, that I should accept that because HCC has raised no objection to options 2 and 3 then either would be acceptable.
71. A fifth option (option 5) that would retain a two-way traffic flow, without a footway being provided or a narrowing of the carriageway, with an all pedestrian zone activated by traffic lights, on demand by pedestrians wishing to cross the bridge, was put forward prior to the appealed application's

determination. However, option 5 appears to have discounted on safety grounds by HCC on the erroneous premise that it would involve the operation of an unusual form of shuttle working. I therefore consider that option 5 may also have been prematurely discounted by HCC because of a fundamental misunderstanding of the way in which it would function.

72. On this issue I conclude that the development with the implementation of option 2 would make inadequate provision for pedestrian access via Downend Road, while the implementation of option 3, in making adequate provision for pedestrian users of Downend Road, would unacceptably affect the operation of this road because of the vehicle queuing and driver delay that would arise. The development would therefore be contrary to the second criterion of Policy CS5 of the Fareham Core Strategy of 2011 (the Core Strategy) insofar as when the development is taken as a whole it would generate significant demand for travel and were option 2 to be implemented it would not provide a good quality walking facility for its occupiers. The development, were option 3 to be implemented, would also be contrary to Policy CS5 (the second bullet point under the third criterion) because it would adversely affect the operation of Downend Road as a part of the local road network.
73. There would also be conflict with Policy DS40 of the Fareham Local Plan Part 2: Development Sites and Policies of 2015 (the DSP) because the implementation of option 3 would have an unacceptable traffic implication.
74. I also consider that there would be conflict with paragraph 109 of the National Planning Policy Framework (the Framework) because the implementation of option 3 in safeguarding the safety of pedestrians would give rise to a residual cumulative effect, vehicle queuing and driver delay, that would be severe for the road network. The development would also not accord with paragraph 110c) of the Framework because the implementation of option 2 would create a place that would not be safe because of the conflict that there would be between pedestrians and vehicles through the provision of an unduly narrow footway within part of the public highway.

#### *Accessibility to services and facilities*

75. The development would be on the edge of Portchester's already quite intensively built up area and it would adjoin an area that is predominantly residential in character. The existing development in the area lies to the south of the M27 and is on either side of the A27 corridor, which essentially follows an east/west alignment.
76. As I have previously indicated there is considerable disagreement about the site's accessibility to local services and facilities by non-private motorised modes of travel. In that regard the appellant is of the view that the development would generate in the region of 650 pedestrian movements per day, while the Council places that figure at a little short of 300 movements. Central to that disagreement is whether the distance there would be between the new homes and places of work and education, shopping, leisure and public transport facilities (the local facilities and services) would be too far as to be accessible by walking trips.
77. Figure T2 in the originally submitted Transport Assessment (page 66 of CD15) identifies where the local services and facilities are relative to the appeal site. Many of those service and facilities are clustered around Portchester's

shopping/district centre. When regard is paid to the various tables within Appendix C of Mr Wall's proof of evidence it is apparent that many of the local services and facilities shown in Figure T2 would be at distances from the development that would exceed the 'acceptable walking distances' referred to in CIHT2000 (CD25).

78. The three proposed pedestrian routes, A, B and C, would variously provide egress and ingress from the development. However, routes A, B and C would be of varying levels of attractiveness. In that regard I consider route C would not be particularly attractive because the section comprising footpath FP117 would be unlit and that would affect its general utility after darkness, particularly for commuters on their return from Portchester railway station. Generally, the use of all three routes would entail walking trips that would exceed the CIHT2000 guidelines for travelling to and from town centres, while the railway stations in Portchester and Fareham would not be within a comfortable walking distances from the development. The access to bus stops in the area would exceed the 400 metre guideline recently reaffirmed by the CIHT in its 'Buses in urban developments' guidance of January 2018 (CD28).
79. So, I think it reasonable to say that the development would fall short of being particularly accessible by transportation modes other than private motor vehicles. In that regard the appellants' estimates for the number of non-private motor vehicle trips may well be quite optimistic. That said this development would be close to many other dwellings in Portchester and the accessibility to local services and facilities would be similar to that for many of the existing residents of the area. Given the existing pattern of development in the area, I consider there would be few opportunities for new housing to be built in Portchester on sites that would be significantly more accessible than the appeal site, something that the maps in Appendix R to Mr Wall's proof of evidence show. In that regard it is of note that the Council is considering allocating this site for development in connection with the preparation of its new local plan.
80. On this issue I therefore conclude that there would not be an unreasonable level of accessibility to local services and facilities for the occupiers of the development by a range of modes of transport. I therefore consider that the development would accord with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP because it would not be situated in an inaccessible location and it would be well related to the existing urban settlement boundary for Portchester.

#### *Effects on the designated habitats*

81. The appellant, the Council and Natural England (NE) are agreed that the development would be likely to have a significant effect on the designated habitats, namely in-combination effects associated with: increased recreational activity in the Portsmouth Harbour Special Protection Area (SPA) and the Solent and Southampton Water SPA; and the increased risk of flooding in the Portsmouth Harbour SPA and Ramsar site and the Solent and Dorset Coast candidate SPA. Additionally, there would be potential for the development to have a significant effect either alone or in combination with other developments arising from nitrogen in waste water being discharged into the designated habitats.

82. Under the provisions of Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended) (the HRs), there is a requirement to undertake a screening assessment to determine whether a development alone or in combination with others would be likely to have a significant effect on integrity of the internationally important interest features that have caused a habitat to be designated. Having regard to the ecological information that is available to me, including the statement of common ground signed by the appellant, the Council and NE (CD13) I find for the purposes of undertaking a screening assessment that this development in combination with others would be likely to have a significant effect on the interest features of the designated habitats through additional recreational activity and the risk of flooding.
83. With respect to the matter of additional nitrogen in waste water being discharged into the designated habitats, I am content, on the basis of the nitrogen balance calculation included as Appendix 4 in CD13, that the development would not give rise to an increased discharge of nitrogen within the designated habitats.
84. Having undertaken a screening assessment and determined that there would be a significant effect on the designated habitats, I am content that mitigation could be provided so that the integrity of the qualifying features of the designated habitats would be safeguarded. The nature of the necessary mitigation has been identified in CD13 and would take the form of the payment of a contribution to fund management measures identified in the Solent Recreation Mitigation Strategy of 2018 and the imposition of planning conditions to avoid the development causing flooding in the area. The necessary financial contribution forms one of the planning obligations included in the executed S106.
85. In the event of this appeal being allowed I consider the imposition of conditions requiring: the incorporation of a sustainable drainage scheme within the development; the implementation of construction environmental management plan that included measures to preclude the pollution of the waters within the designated habitats during the construction phase; and a limitation on water usage for the occupiers of the development would be necessary and reasonable to safeguard the integrity of the designated habitats.
86. I therefore conclude that the development, with the provision of the mitigation I have referred to above, could be implemented so as to safeguard the integrity of the designated habitats. In that respect the development would accord with Policy CS4 of the Core Strategy and Policies DSP13 and DSP15 of the DSP because important habitats would be protected.

## **Other Matters**

### *Housing Land Supply*

87. The Council cannot currently demonstrate the availability of a five year housing supply (5yrHLS), with it being agreed that the current five year requirement is 2,730 dwellings. However, there is disagreement as to what the quantum of the 5yrHLS shortfall is when regard is paid to the supply of deliverable sites for homes, having regard to the definition for 'deliverable' stated in Annex 2 of the Framework. That definition stating to be considered deliverable:

'... sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular: ...  
b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.'

88. The appellant contends that the current deliverable supply of homes is 1,323 dwellings, equivalent to HLS of 2.4 years, while the Council argues that the deliverable supply of homes is 2,544 homes, equivalent to an HLS of 4.66 years<sup>32</sup>.
89. That difference being attributable to the appellant having deducted 1,221 dwellings from the deliverable supply identified by the Council. That deduction being made up of: 761 dwellings associated with large sites without development plan allocations and not benefiting from a planning permission (inclusive of some with resolutions to approve); 100 dwellings on the brownfield register, but with no submitted application; 70 dwellings concerning allocated sites but only with a resolution for approval; 50 dwellings concerning allocated sites without a planning permission; and 240 dwellings forming part of the Welborne allocation that would not be delivered in the five year period because planning permission for that development has not been issued.
90. The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.
91. The development would therefore be capable of making a meaningful contribution to the reduction of the current housing shortfall, with 215 dwellings anticipated to be delivered in the five year period between January 2022 and the end of March 2024<sup>33</sup>.

#### *Heritage effects*

92. The development would be situated within the extended settings for: Portchester Castle, a Grade I listed building and scheduled monument; Fort Nelson, a Grade II\* listed building and scheduled monument; and the Nelson Monument, a Grade II\* listed building. The Castle is situated to the south of the site towards the northern extremity of Portsmouth Harbour. Fort Nelson and the Nelson Monument lie to the north of the site, off Portsdown Hill Road.
93. The designated heritage assets are of significance because of their importance to the military history of the local area. However, I consider the effect of the development on the significance of the heritage assets would be less than

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<sup>32</sup> Having regard to the figures quoted in paragraphs 1.18 and 1.19 in the Housing Land Supply SoCG (CD14)

<sup>33</sup> Table 1 in Mrs Mulliner's PoE

substantial, having regard to the policies stated in section 16 (Conserving and enhancing the historic environment) of the Framework. That is because the development would be read within the context of Portchester's extensive established built up area. Nevertheless, paragraph 193 of the Framework advises '... great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'. The less than substantial harm I have referred to therefore attracts great weight.

### *Planning Obligations*

94. The S106 would secure the provision of 40% affordable housing within the development to accord with the provisions of Policy CS18 of the Core Strategy. To mitigate the development's off-site effects on the operation of the local highway network and demands on local transport infrastructure the S106 includes various obligations that would require contributions to be paid to fund appropriate works. There are also obligations relating to the, the provision of and the payment of maintenance contributions for public open and play space and the payment of a contribution for school facilities in the area. To minimise dependency on private motor vehicle usage amongst occupiers of the development the S106 includes planning obligations that would require the undertaking of improvements to the Cams bridge and implementation of a travel plan.
95. Those planning obligations would address development plan policy requirements and I consider that they would be: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. While the planning obligations are necessary, of themselves there is nothing particularly exceptional about them.

### **Planning Balance and Conclusion**

96. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
97. For the reasons given above I have found that the development with the implementation of the option 2 alteration to the Downend Road railway bridge would make inadequate provision for pedestrian access via Downend Road. I have also found that while the implementation of the option 3 alteration to the Downend Road railway bridge would make adequate provision for pedestrian users of Downend Road, the development would unacceptably affect the operation of this road because of the vehicle queuing and driver delay that would arise. I consider those unacceptable effects of the development give rise to conflict with Policy CS5 of the Core Strategy and Policy DSP40 of the DSP and paragraphs 109 and 110c). I consider that the elements of Policies CS5 and DSP40 that the development would be in conflict with are consistent with the national policy and are the most important development plan policies for the purposes of the determination of this appeal. I therefore consider that great weight should be attached to the conflict with the development plan that I have identified.

98. I have found that the accessibility to local services and facilities by modes of transportation other than private motor vehicles would not be unreasonable. That is something that weighs for the social benefits of the development. The development would be capable of being implemented in a manner that would safeguard the integrity of the off-site designated habitats and in that regard the development would have a neutral effect on the natural environment. In relation to these main issues there would be compliance with some of the development plan's policies. Nevertheless, the conflicts with the development plan that I have identified are of sufficient importance that the development should be regarded as being in conflict with the development plan as a whole.
99. There would be significant social and economic benefits arising from the construction and occupation of up to 350 dwellings, including the short term boost to the supply of market and affordable homes in the Council's area. There would be some harm to the setting of the nationally designated heritage assets in the area, however, I have found that harm would be less than substantial and I consider that harm would be outweighed by the previously mentioned social and economic benefits arising from the development.
100. I am of the view that the unacceptable harm to pedestrian safety and the operation of the public highway that I have identified could not be addressed through the imposition of reasonable planning conditions. I have assessed all of the other material considerations in this case, including the benefits identified by the Appellant, but in the overall planning balance I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
101. I therefore conclude that the appeal should be dismissed.

*Grahame Gould*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

John Litton	Of Queens Counsel instructed by Terence O'Rourke Limited
Tim Wall BA MSc MCIHT CMILT	Associate Partner of i-Transport LLP
Jacqueline Mulliner BA (Hons) BTP (Dist) MRTPI	Director and Head of national planning with Terence O'Rourke Limited

### FOR FAREHAM BOROUGH COUNCIL:

David Lintott	Of Counsel instructed by the Council's legal officer
Vera Lamont BEng MICE FCIHT MCMi	Director with Mayer Brown
Andrew Burgess BA (Hons) MRTPI FRSA	Senior consultant with Adams and Hendry Consulting Limited
Richard Wright	Principal Planner (Development Management)

### INTERESTED PARTIES:

Councillor Nick Walker	Fareham Borough Council
Councillor Roger Price	Fareham Borough Council
Councillor Shaun Cunningham	Fareham Borough Council
John McClimont	Chairman Fareham Society
Brian Eastop	Local Resident
Anne Brierly	Local Resident

## **INQUIRY DOCUMENTS (IDs) SUBMITTED AT OR AFTER THE INQUIRY**

ID1	Mr Lintott's opening submissions on behalf of Fareham Borough Council
ID2	Mr Litton's opening submissions on behalf of the appellant, with appendices
ID3	Statement of Councillor Walker and Councillor Sue Bell
ID4	Statement of Mr McClimont, Chairman of the Fareham Society

- ID5 Article by John Fruin 'Designing for pedestrians: a level-of-service concept'
- ID6 Junction visibility extract from Design Manual for Road and Bridges CD123 Revision 0 (August 2019)
- ID7 i-Transport drawings ITB12212-TR: 001A; 002A; 003A; 006A; and 007A and ITB12212-GA-104A annotated by Mayer Brown
- ID8 Mayer Brown additional statement of facts
- ID9 Vectos Model re-run by Mayer Brown output data and screen shots
- ID10 Queue Assessment Information (including data sheets) from i-Transport, response to rerun of Vectos Model undertaken by Mayer Brown
- ID11 Annotated services/facilities context maps of the footways at bridges/tunnels examples included in Appendix V of Mr Wall's Proof of Evidence
- ID12 Vectos comments on the Downend Road Railway Bridge Paramics Modelling undertaken by Mayer Brown in September 2019 further to the review comments being made by Systra
- ID13 Councillor's Cunningham's speaking note
- ID14 Mayer Brown Video file for the operation of Downend Road Bridge
- ID15 i-Transport Video file for the operation of Downend Road Bridge
- ID16 Mrs Mulliner's speaking note on housing land supply
- ID17 Copies of development plan policies CS4, DSP13, DSP15
- ID18 Final version of list of suggested planning
- ID19 Certificated copy of the executed Section 106 agreement
- ID20 Final version of the Inquiry Position Statement
- ID21 Mr Lintott's written closing submissions on behalf of Fareham Borough Council
- ID22 Mr Litton's written closing submissions on behalf of the appellant



## Appeal Decisions

Inquiry Held on 9-12, 16-19 and 23-25 February 2021

Accompanied site visit made on 13 April 2021

**by I Jenkins BSc CEng MICE MCIWEM**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 8<sup>th</sup> June 2021**

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### **Appeal A Ref: APP/A1720/W/20/3252180**

#### **Land at Newgate Lane (North), Fareham,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Fareham Land LP against Fareham Borough Council.
  - The application Ref. P/18/118/OA, is dated 19 September 2018.
  - The development proposed is demolition of existing buildings and development of up to 75 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure.
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### **Appeal B Ref: APP/A1720/W/20/3252185**

#### **Land at Newgate Lane (South), Fareham,**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Bargate Homes Ltd. against Fareham Borough Council.
  - The application Ref. P/19/0460/OA, is dated 26 April 2019.
  - The development proposed is demolition of existing buildings and development of up to 115 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure.
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## **Decisions**

1. Appeal A is dismissed and the outline planning permission sought is refused.
2. Appeal B is dismissed and the outline planning permission sought is refused.

## **Procedural matters**

3. In each case, the planning application subject of appeal is in outline, with all detailed matters except access reserved for future consideration. While the application subject of appeal B was with the Council for determination, the scheme was revised with the agreement of the Council by limiting the unit numbers to 'up to 115 dwellings', rather than 'up to 125 dwellings' as identified on the planning application form. The change was supported by amended plans. I have considered the appeal on the basis of the revised scheme and reflected the details in the summary information above.
4. Following the submission of the appeals, the Council's Planning Committee determined on the 24 June 2020 that, were it still in a position to do so,

it would have refused to grant planning permission in both cases. In support of its view, the Council cited 15 reasons for refusal in each case (a)-o)).

The reasons for refusal were the same with the exception of: appeal A reason e), which relates to the loss of best and most versatile agricultural land; and, appeal B reason i) related to the protection and enhancement of Chamomile. Prior to the Inquiry, the Council confirmed that, in each case, 3 of the other reasons for refusal had been satisfactorily addressed: appeal A reasons f), g) and i); and, appeal B reasons e), f) and h).

5. Each of the schemes is supported by a formally completed unilateral undertaking (UU): appeal site A-UUA; and, appeal site B-UUB, which seek to secure a number of financial contributions, Affordable Housing and sustainable travel measures. In addition, the appellants have provided a unilateral undertaking related to off-site mitigation for the loss of a low use Solent Wader and Brent Goose site (UUC). I have taken those UUs into account.
6. Reasons for refusal j) and k) relate to the absence of appropriate measures to mitigate likely adverse effects on the integrity of European Protected Sites. The appellants and the Council are content that those matters have now been satisfactorily addressed by mitigation measures secured by the unilateral undertakings. Nonetheless, there is no dispute that if I were minded to allow the appeals, I would need to re-consult Natural England and undertake an Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017*.
7. Reasons for refusal k)-o) relate to the absence of legal agreements to secure other necessary mitigation measures. However, the Council now considers that those reasons have been satisfactorily addressed by the submitted UUs or could be addressed through the imposition of suitable conditions.
8. Insofar as appeal A reason for refusal h) and appeal B reason for refusal g) relate to the capacity of the Newgate Lane East junction with Newgate Lane, the Council withdrew<sup>1</sup> that aspect of its case before the appellants presented their evidence on the matter<sup>2</sup>. Therefore, I have not considered it further.

### **Main Issues**

9. I consider that the main issues in these cases are: the effect of the proposals on the character and appearance of the area; the effect on highway safety; whether, with reference to accessibility, the schemes would be sustainably located; the effect on the spatial development strategy for the area; and, the effect on housing land supply.

### **Reasons**

10. Appeal site A comprises 3.95 hectares of agricultural land, which is bounded by a small area of agricultural land to the north, Newgate Lane to the west and Newgate Lane East to the east. The site shares a small proportion of its southern boundary with Hambrook Lodge and the remainder is shared with appeal site B. The appeal A proposal would involve the development of up to 75 dwellings within the site as well as other associated works. Appeal site B comprises 6.1 hectares of agricultural land, which is bounded by Woodcote Lane to the south, Newgate Lane to the west and Newgate Lane East to the

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<sup>1</sup> Including the evidence given by Mr Whitehead.

<sup>2</sup> Inquiry document no. 23.

east. Part way along its length, the northern boundary of the site wraps around the western, southern, and eastern boundaries of the grounds of Hambrook Lodge. Otherwise appeal site B shares its northern boundary with appeal site A. The appeal B proposal would involve the development of up to 115 dwellings within the site as well as other associated works.

11. Vehicular, cycle and pedestrian access to each site would be provided by an access road leading from Newgate Lane. A pedestrian/cycle route is also proposed from appeal site A through appeal site B to Woodcote Lane, leading to the proposed Toucan crossing of Newgate Lane East and Bridgemary. The proposed Toucan crossing would be funded through the provision of a contribution secured by UUB. The *Statement of Common Ground-Linked Delivery* (SoCGLD) has been agreed between the appellants and the Council. It indicates that it would be possible to ensure that the appeal A scheme cannot come forward independently of the appeal B scheme through the imposition of a Grampian condition, thereby ensuring the provision of those proposed access links.
12. The appeal sites form part of an area of countryside situated between the urban settlement boundary of Stubbington, to the west, Gosport, to the east and Fareham, to the north. The settlement referred to as Peel Common in the evidence of the main parties is limited to the residential and commercial properties located off Newgate Lane, Woodcote Lane and Albert Road, within the administrative area of Fareham Borough Council (the Council). Under the terms of the Development Plan, Peel Common does not have a defined settlement boundary and it is also situated in the area of countryside that includes the appeal sites. Furthermore, it does not include the 'Peel Common' housing estate located further to the east within Gosport Borough Council's administrative area. The closest urban boundary to the appeal sites is to the east and is associated with a number of areas within Gosport, such as Bridgemary, Woodcot and the 'Peel Common' housing estate. For simplicity, those areas have been jointly referred to in the evidence of the main parties as Bridgemary. I have taken the same approach in these decisions.
13. Policy CS14 of the *Fareham Local Development Framework Core Strategy, 2011* (LP1) indicates that built development on land outside the defined settlements will be strictly controlled to protect the countryside from development which would adversely affect its landscape character, appearance and function. Policy DSP6 of *the Local Plan Part 2: Development Sites and Policies, 2015* (LP2) indicates that there will be a presumption against new residential development outside the defined urban settlement boundaries (as identified on the Policies Map) and that proposals should not result in detrimental impact on the character or landscape of the surrounding area.
14. The area of countryside situated between the settlement boundary of Stubbington, to the west, Gosport, to the east and Fareham, to the north also forms part of the Stubbington/Lee-on-the-Solent and Fareham/Gosport Strategic Gap (Fareham-Stubbington Gap), shown on the LP2 Policies Map Booklet. LP1 Policy CS22 indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
15. However, the Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites.

The reasoned justification for LP2 Policy DSP40 indicates that the Council is committed to delivering the housing targets in the Core Strategy, and so it is important to provide a contingency position in the Plan to deal with unforeseen problems with delivery. To that end, Policy DSP40 indicates that where it can be demonstrated that the Council does not have a five-year supply of land for housing, additional sites, outside the urban area boundary, within the countryside and Strategic Gaps, may be permitted where they meet a number of criteria (the DSP40 contingency). Those criteria are not as restrictive as the requirements of LP1 Policies CS14 and CS22 or LP2 Policy DSP6. To my mind, it follows that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies would be reduced and would be outweighed by compliance with LP2 Policy DSP40.

### ***Character and appearance of the area***

16. Criterion (ii) of LP2 Policy DSP40 requires that the proposal is well related to the existing urban settlement boundaries and can be well integrated with the neighbouring settlement. To ensure that this is the case, the reasoned justification for the Policy indicates that sensitive design will be necessary. The Council and the appellants agree that the existing urban settlement boundary of Bridgemary is relevant in this context. Criterion (iii) of Policy DSP40 requires that the proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the countryside and, if relevant, the Strategic Gaps. In this context the main parties agree that both Bridgemary and Peel Common are relevant neighbouring settlements. The reasoned justification for LP1 Policy CS22, which deals with development in Strategic Gaps, indicates that they do not have intrinsic landscape value but are important in maintaining the settlement pattern. I consider therefore, that the Strategic Gap designation is of little relevance to this particular main issue. I deal with the effect on the Fareham-Stubbington Gap later in this decision.
17. Peel Common would be the closest settlement to both appeal sites. The pattern of built development there is characterised, for the most part, by ribbon development that fronts onto the western side of Newgate Lane, with small spurs eastwards along the southern side of Woodcote Lane and westwards along Albert Road. Along Newgate Lane the ribbon of development only extends northwards to a point just beyond the alignment of the southern boundary of appeal site A on the opposite side of the highway. I consider that the only notable development to the west of appeal site A, on the western side of Newgate Lane, comprises: Peel Common Wastewater Treatment Works, which is set well back from the highway and is screened from view by landscaping; and, Newlands' Solar Farm, which is relatively low profile. Peel Common is described by the *Fareham Landscape Assessment, 2017* (FLA) as an isolated small settlement and, in my view, given its scale, pattern of development and location in the countryside, that is a reasonable assessment.
18. Both appeal sites are divided into an eastern and western section by the River Alver, which runs in a north-south direction through the sites. To the east of the river the land within the appeal sites is predominantly arable and to the west grassland. The latest Illustrative Masterplans submitted in support of the schemes indicate that, in both cases, the proposed dwellings would be clustered on the eastern side of the River Alver and the land to the west would comprise public open space. To my mind, the absence of residential

development from the western sections of the sites would be necessary, due to the environmental constraints associated with the land to the west of the river, and it could be secured by condition. The constraints include areas at high risk of surface water flooding and of particular ecological value.

19. As a result, and in stark contrast to the existing settlement pattern of Peel Common, none of the proposed residential properties would front onto Newgate Lane or be directly accessed from either Newgate Lane or Woodcote Lane. Links between appeal site B and Woodcote Lane would be limited to a pedestrian/cycleway connection. In each case, the main access to the proposed residential areas would comprise a single access road between Newgate Lane and the eastern section of each site. The sections of these roads through the proposed public open space, in the western sections of the sites, would be devoid of roadside development for the reasons set out above, which would further weaken the relationship between the proposed residential areas and the existing settlement. I understand that in terms of dwelling numbers, the appeal B scheme would be larger than the size of the existing settlement of Peel Common and the appeal schemes together would be approximately double its size. I consider that, with particular reference to their size and location, the proposals have not been sensitively designed to reflect the character of the neighbouring settlement of Peel Common, contrary to the aims of LP2 policy DSP40(iii). Furthermore, in my judgement, due to the site constraints, these are not matters that could be satisfactorily mitigated through design at the reserved matters stage.
20. The area of Bridgemarky, which is situated to the east of the appeal sites, is primarily residential in character, with a variety of building styles generally of 1 to 2-storeys in height. A network of roads and footways provides for ease of movement within that residential area and closely integrates it with the much larger urban area of Gosport. The appeal proposals would also be residential in character and proposed buildings of a similar scale could be secured by condition. However, the appeal sites would be set well apart from that existing urban area, beyond agricultural fields and a recreation ground. The most direct access route between them would be along Woodcote Lane, across Newgate Lane East and along Brookes Lane; a route unsuitable for cars. In my judgement, the appeal schemes, whether considered on their own or together would comprise and would be perceived as islands of development in the countryside set apart from the existing urban settlements. They would not amount to logical extensions to the existing urban areas. I consider that, with particular reference to their isolated location, the proposals have not been sensitively designed to reflect the character of the neighbouring settlement of Bridgemarky. Furthermore, they would not be well related to the existing urban settlement boundary of Bridgemarky or well-integrated with it. In these respects, the proposals would conflict with LP2 Policy DSP40(ii) and (iii). In my judgement, due to the location of the sites, these are not matters that could be satisfactorily mitigated through design at the reserved matters stage.
21. In relation to the requirement of Policy DSP40(iii) that any adverse impact on the countryside be minimised, the Council argues that 'minimise' should be interpreted as requiring any adverse impact to be small or insignificant. I do not agree. The aim of the Policy is to facilitate development in the countryside relative in scale to the demonstrated five-year housing land supply shortfall. To my mind, any new housing development in the countryside would be likely to register some adverse landscape and visual effect, and

development of a scale to address a substantial shortfall would be unlikely to register a small or insignificant impact. The Council's approach would make the Policy self-defeating. Given the aim of the Policy with respect to housing land supply, I consider that it would be reasonable to take 'minimise' to mean limiting any adverse impact, having regard to factors such as careful location, scale, disposition and landscape treatment.

22. The Framework places particular emphasis on the protection and enhancement of valued landscapes (in a manner commensurate with their statutory status or identified quality in the Development Plan). It seeks to give the greatest level of protection to the landscape and scenic beauty of designated areas, such as National Parks and Areas of Outstanding National Beauty (AONB). The appeal sites are not the subject of any statutory or non-statutory landscape designations. Nonetheless, *Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA)* by the Landscape Institute and Institute of Environmental Management & Assessment indicates that the absence of a designation does not mean that an area of landscape is without any value and points to landscape character assessments as a means of identifying which aspects of a landscape are particularly valued. Furthermore, insofar as it seeks to minimise any adverse impact on the countryside, I consider that LP2 Policy DSP40 is consistent with the Framework, which seeks to ensure that decisions contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
23. As the planning applications the subject of these appeals are in outline, a full assessment of the landscape and visual impacts of the proposed schemes cannot be carried out at this stage. Nonetheless, the illustrative layout plans indicate that, in each case, the proposed dwellings would be set back from the perimeter of the site beyond relatively narrow areas of landscaping. To my mind, the scope for landscaping would be unlikely to be significantly greater, given the number of dwellings proposed and that it would not be reasonable to seek to use a condition to modify the developments to make them substantially smaller in terms of unit numbers than that which was applied for. In my view, that would amount to a change upon which interested parties could reasonably expect to be consulted and would require a new application. Whilst the Design and Access Statements indicate that the proposed buildings may be up to 3-storeys in height, the appellants have indicated that they could be limited to 1-2 storeys, in keeping with the surroundings, through the imposition of conditions and without reducing the numbers of units proposed.

#### *Landscape impact*

24. GLVIA indicates that the assessment of landscape effects involves assessing the effects on the landscape as a resource in its own right. This is not just about physical elements and features that make up the landscape; it also embraces the aesthetic<sup>3</sup>, perceptual and experiential aspects of the landscape that make different places distinctive/valued.
25. Natural England's *National Character Assessment* places the appeal sites within the South Coast Plain National Character Area, the characteristics of which include that the plain slopes gently southwards towards the coast and there are

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<sup>3</sup> CD138 page 84 Box 5.1 'scenic quality...landscapes that appeal primarily to the visual senses', perceptual aspects...perceptual qualities, notably wilderness and/or tranquillity', 'experiential 'evidence that the landscape is valued for recreational activity where experience of the landscape is important'.

stretches of farmland between developed areas. At a county level, the sites form part of the Gosport and Fareham Coastal Plain Landscape Character Area, as identified by the *Hampshire Integrated Character Assessment 2012* (HICA), and within that area part of the Coastal Plain Open Landscape Type.

Its characteristics include, amongst other things, extensive and flat or gently sloping plain, often associated with arable land uses and some of the most densely developed areas in Hampshire have occurred in this landscape.

The HICA informed the *Fareham Landscape Assessment, 2017* (FLA), which was commissioned by the Council to inform emerging Local Plan policy.

26. The FLA identifies the area within which the appeal sites are situated as Landscape Character Area 8 (LCA 8), Woodcot-Alver Valley. LCA 8 forms part of the easternmost extent of the Fareham-Stubbington Gap and is divided into 5 Local Landscape Character Areas (LLCAs). More specifically appeal site A and the majority of appeal site B, with the exception of the strip of land to the west of the River Alver, fall within LLCA 8.1a. This area is generally bounded by Newgate lane to the west, Woodcote Lane to the south, the western edge of Bridgemary to the east and Speedfields Park Playing Fields to the north. Outside of this LLCA, to the west and south are the main residential sections of the Peel Common settlement, which fall within LLCA 8.2: *Peel Common and Alver Valley*, as does the western section of the appeal B site. Newlands' Solar Farm and Peel Common Wastewater Treatment Works, which are sited to the west of the appeal sites, fall within LLCA 7.1: *Fareham-Stubbington Gap*.
27. The FLA comments both on the character of LLCA 8.1a prior to the completion of Newgate Lane East and on the likely implications of that highways scheme.
28. Prior to the completion of Newgate Lane East, the FLA recognises that LLCA 8.1a is not covered by any current national or local landscape designation, its scenic quality is not exceptional and it is affected by some localised intrusion of urban features around its periphery. It indicates that LLCA 8.1a shares the typically flat, low-lying character of the coastal plain landscape and whilst it lacks the very open, expansive character of other parts of the coastal plain (including adjacent land within the Strategic Gap to the west), it nevertheless has a relatively open and large-scale character. More specifically, it is generally devoid of built development (apart from buildings at Peel Farm<sup>4</sup>), retains a predominantly open, rural, agricultural character, and tree belts along its boundaries to the north, east and south give the area a sense of enclosure from surrounding urban areas and contribute to its aesthetic appeal. The FLA indicates that overall, the landscape value of LLCA 8.1a is moderate to high. Furthermore, the FLA identifies that the landscape resource has a high susceptibility to change, as it has very limited capacity to accommodate development without a significant impact on the integrity of the area's rural, agricultural character. Whilst these judgements are not disputed, the Council and appellants disagree over the impact that the construction of Newgate Lane East has had.
29. Regarding Newgate Lane East, the FLA anticipated that as the road corridor would be relatively narrow, unaffected land within the rest of the area should be of sufficient scale to maintain its essentially rural character. In my view, this is the case notwithstanding that the roadside planting, which has the potential to reduce the visibility of the highway and associated fencing, has yet to

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<sup>4</sup> Around Hambrook Lodge.

mature. Furthermore, given the relatively low profile of the road scheme, the openness of the area is largely unaffected. Under these circumstances, I consider that whilst the landscape value of LLCA 8.1a has been reduced by the road scheme to medium, the susceptibility of the landscape to change remains high, rather than low/medium identified by the *Landscape and Visual Impact Assessments* submitted in support of the applications (LVIAs). Support for this judgement is provided by the FLA, which indicates that significant further development in addition to the road scheme would almost certainly have an overwhelming urbanising effect, potentially tipping the balance towards a predominantly urban character. Overall, I regard the sensitivity of the landscape resource within LLCA 8.1a to be medium/high, consistent with the Council's Landscape and Visual Assessment findings, and contrary to the low/medium findings set out in the LVIAs.

30. In both cases, the proposals would replace a significant proportion of the agricultural land within LLCA 8.1a with residential development. Whether single-storey or taller buildings are proposed, the massing of each development would add to the sense of enclosure of this LLCA, greatly diminishing its open character and the duration of the impact would be long term. Considering each scheme on its own, the size and scale of the change, taken together with the existing limited intrusion from surrounding urban influences and the effect of Newgate Lane East, would be sufficient in my judgement to tip the balance towards a predominantly urban character. I acknowledge that the impact would not extend beyond LLCA 8.1 to affect a wider area of landscape. Nonetheless, I judge the magnitude of change as medium and the significance would be moderate to moderate/major adverse, even after mitigation. In my view, the effect would not be as low as the minor/moderate or minor adverse significance of effect identified by the LVIAs, which the appellants suggest would be considered acceptable and would not constitute an overall 'harm' to the landscape.
31. As I have indicated, the only section of the appeal sites that falls within LLCA 8.2 is the western section of appeal site B, the development of which would be constrained by its ecological value. Therefore, I give little weight to the view set out in the FLA regarding LLCA 8.2 that there may be potential for some modest, small scale development associated with the existing built form at Peel Common.
32. I consider overall that the proposals would each cause significant harm to the landscape of the area.

*Visual impact*

33. There is no dispute that the area from which the proposed developments would potentially be visible, the visual envelope, would be limited. This is due to a combination of the flat topography of the surroundings and the effects of vertical elements such as neighbouring settlement edges and some tall vegetation. As a result, the visual receptors identified by the Council and the appellants are relatively close to the appeal sites and the associated assessments of visual effects provided by those parties are broadly comparable, finding a number of adverse impacts of moderate or greater significance.
34. As regards the users of Newgate Lane, I consider them to be of medium sensitivity to change, consistent with the position set out in the LVIAs and by

- the Council. However, the proposed development would significantly alter views eastwards. Currently long views can be enjoyed from some vantage points across relatively open countryside, Newgate Lane East being low profile infrastructure, towards the tree lined edge of Bridgemary and the 'big skies' noted by the *Technical Review of Areas of Special Landscape Quality and Strategic Gaps* (2020)(TR). As a result of either appeal scheme on its own, residential development would become a prominent feature in the foreground of such views, notwithstanding the proposed setback beyond an area of open space between the highway and the proposed dwellings. From some vantage points, the long rural view would be interrupted entirely, being replaced by a short suburban view of one of the appeal schemes, which would be likely to break the existing skyline and greatly reduce the sense of space. I regard the magnitude of impact as high and the significance of impact as major/moderate adverse, in common with the Council.
35. The LVIA's did not consider vantage points along Newgate Lane East, which was under construction when the assessments were undertaken. I consider users of Newgate Lane East to be of medium sensitivity to change, in common with users of Newgate Lane. It is anticipated that the proposed buildings would be set back from Newgate Lane East beyond a strip of landscaping, within the sites and along the edge of the highway. Nonetheless, given the likely scale and disposition of the built development, I consider it likely that it would still be visible to some extent from that neighbouring road. In my judgement, when travelling between the built-up areas to the north and south, the respite provided by the surrounding countryside along Newgate Lane East is of notable value. That value would be greatly diminished as a result of either scheme. Both would foreshorten views to the west and tip the balance from a predominantly rural to suburban experience. The magnitude of impact on that receptor would be medium and the significance of impact moderate adverse.
36. Overall, I consider that the significance of the visual impact would be moderate to moderate/major adverse. It would have a significant adverse effect on the appearance of the area.
37. The FLA sets development criteria to be met in order to protect the character and quality of landscape resources, views, visual amenity, urban setting and green infrastructure. Whilst the aim of LP2 Policy DSP40 is to minimise, rather than avoid, any adverse impact, I consider that they are of some assistance when judging the extent to which there would be an impact and whether it can be regarded as being minimised. I acknowledge, that in the context of making some provision for housing land supply in the countryside, it would be unrealistic to expect the open, predominantly agricultural and undeveloped rural character of area LLCA 8.1a to be entirely protected as the FLA suggests. However, the proposals would cause significant harm in that regard. Furthermore, rather than situating the proposed developments to the east of Newgate Lane East, next to existing urban areas, the schemes would amount to the creation of substantial new pockets of urbanising built development within existing open agricultural land.
38. I conclude that, in each case, the proposal would cause significant harm to the character and appearance of the area, having had regard to the location, disposition, likely scale and landscape treatment, each would fail to minimise the adverse impact on the countryside. The proposals would conflict with LP2 Policy DSP40(ii) and (iii).

### ***Highway safety***

39. The *Statement of Common Ground on Transport (SoCGT)*, agreed between the Council and the appellants, states it is agreed that the individual and cumulative impacts of the northern and southern sites would have a detrimental impact on the operation of the existing right turn lane priority junction between Newgate Lane and Newgate Lane East. Furthermore, this cannot be mitigated by priority junction improvements and so a signalised junction is proposed.
40. The proposed signalised junction would introduce a flare from 1 to 2-lanes on the northbound Newgate Lane East approach to the junction and a merge back to 1 lane some distance after the junction. Furthermore, the SoCGT indicates, in relation to southbound vehicles seeking to access Newgate Lane from Newgate Lane East across 2 lanes of on-coming traffic, the proposed signal method of control would be the provision of an indicative arrow right turn stage. Under the proposed signalling arrangement, right turn movements from Newgate Lane East into Newgate Lane could occur at three points in the cycle of the signals: firstly, turning in gaps in the free flowing northbound traffic; secondly, during the intergreen period when the northbound flow is stopped and before the Newgate Lane traffic is released; and, then if right turners are still waiting after the cycle, the indicative arrow would be triggered to allow them to turn unopposed. The SoCGT confirms that the appellants are proposing an indicative arrow arrangement rather than the provision of a fully signalised right turn stage, as the latter would operate unacceptably in terms of capacity.
41. The appellants' *Stage 1 Road Safety Audit (RSA)* identifies a potential problem with the proposed right turn lane arrangement, with reference to CD 123 of the *Design Manual for Roads and Bridges (DMRB)*. In the context of right turning traffic movements at signal-controlled junctions, CD 123 indicates that where the 85<sup>th</sup> percentile approach speed is greater than 45 mph, there is an increased risk of accidents between right-turning vehicles seeking gaps and oncoming vehicles travelling at speed. It confirms that where the 85<sup>th</sup> percentile approach speed is greater than 45 mph, right hand turns should be separately signalised. Against that background, the RSA raises the concern that higher northbound vehicle speeds (particularly in off-peak traffic conditions) may mean that gap acceptance by the drivers of right turning vehicles could lead to right-turn collisions or to sudden breaking and shunt type collisions. It recommends that, at detailed design stage, signal staging/phasing should incorporate a separately signalled right-turn into Newgate Lane and that it would be appropriate to measure northbound vehicle speeds to design signal staging and phasing arrangements accordingly.
42. DMRB CA 185 sets out the approach to vehicle speed measurement on trunk roads where existing vehicle speeds are necessary to set the basis for the design of signal-controlled junctions. CA 185 confirms that 85<sup>th</sup> percentile vehicle speeds shall be calculated where designs are to be based on measured vehicle speeds. It is common ground that, whilst this standard is intended for use in relation to trunk roads, in the absence of any other reference, it can be used to guide the measurement of vehicle speeds on other roads, such as Newgate Lane East.
43. The SoCGT identifies 3 speed surveys whose results are relevant to the consideration of northbound speeds on Newgate Lane East. They were

undertaken in: September/October 2018; February/March 2020; and November 2020. All three surveys include measurements undertaken at weekends, contrary to the CA 185 protocol which indicates that speed measurements shall not be undertaken at weekends. Nevertheless, they were not limited to weekend measurements. Each survey included measurements on other days of the week, and I have not been provided with any evidence to show that the 85<sup>th</sup> percentile speeds derived from the surveys are not reasonably representative of the weekdays surveyed. However, the last survey was carried out during a period affected by movement restrictions associated with the coronavirus pandemic and the recorded average flow rates are noticeably lower than those recorded at the same times of day in the other two surveys. I consider that, under these circumstances, greater weight is attributable to the results of the earlier two surveys.

44. CA 185 indicates that a minimum number of 200 vehicles speeds shall be recorded in the individual speed measurement period and speed measurements should be taken outside of peak traffic flow periods. The peak hours identified by the *Transport Assessments* submitted in support of the appeal planning applications are 08:00-09:00 hrs (AM peak) and 17:00-18:00 hrs (PM peak). Whilst CA 185 indicates that non-peak periods are typically between 10:00-12:00 hrs and 14:00-16:00 hrs, I share the view of the Highway Authority (HA) that this does not rule out consideration of other non-peak periods, so long as a minimum number of 200 vehicles speeds are recorded in the individual speed measurement period as required by CA 185. Having regard to the results of the September/October 2018 and February/March 2020 surveys for northbound traffic on Newgate Lane East, in addition to the typical periods identified above, the period from 05:00-06:00 hrs meets these criteria, falling outside of the peak hours and having a recorded average flow greater than 200 vehicles.
45. The September/October 2018 and February/March 2020 survey results record 85<sup>th</sup> percentile speeds in the periods 10:00-12:00 hrs and 14:00-16:00 hrs in the range 41 mph-44.8 mph when a wet weather correction is applied. The upper end of this range being only marginally below 45 mph. In the period 05:00-06:00 hrs the results exceeded 45 mph. CA 185 indicates that where there is a difference in the 85<sup>th</sup> percentile speeds derived from the individual speed measurement periods, the higher value shall be used in the subsequent design.
46. I give little weight to the view of the appellants that the introduction of traffic signals, as proposed, would be likely to result in drivers being more cautious and so reduce their vehicle speeds. Even if that were the case, it is not clear that it would reduce 85<sup>th</sup> percentile speeds in the period 05:00-06:00 hrs to below 45 mph or that this undefined factor should be taken into account in the design. The appellants have suggested that in the absence of any demand over-night, the signals would revert to an all red stage, which would further slow the speeds of vehicles. However, it appears that there would be likely to be demand in the period 05:00-06:00 hrs. Furthermore, the HA has confirmed, for a number of reasons, that is not the way multi-arm junctions are set up on its network. Firstly, for junction efficiency, the signals would be expected to rest on green on Newgate Lane East, allowing traffic to proceed unimpeded on the main arm. Secondly, this approach reduces the likelihood of drivers, who wrongly anticipate that the lights will turn from red to green on their approach,

- proceeding without slowing and colliding with others. In light of the HA's established approach, I give little weight to the appellants' suggestion.
47. I consider that the proposals, which would not include separate signalisation of the right-hand turn, would conflict with CD 123.
48. The operation of the existing priority junction involves some drivers turning right from Newgate Lane East into Newgate Lane across a single northbound lane and there is no dispute that at present the junction operates safely. However, the proposed junction arrangement would give rise to the possibility of right turning vehicles gap-seeking across 2 opposing lanes, a practice which the HA considers would be unsafe. I note that Rule 180 of the *Highway Code* indicates that right turning drivers should wait for a safe gap in oncoming traffic. However, the basis of the HA's concern is that a right turning driver may not be able to see an oncoming nearside northbound vehicle, due to screening by offside northbound vehicles, until it is too late to avoid a conflict. The Rule 180 illustration is of a single opposing lane and it does not grapple with the potential for unsighted vehicles in a two opposing lanes scenario. In support of its concern, the HA has identified other junctions where the frequency of accidents involving right turning vehicles has been reduced by moving from a situation where gap-seeking across 2 lanes is allowed to a fully signalised right turn phase.
49. With respect to the modified junctions drawn to my attention by the HA, I agree with the appellants that, in the absence of data with respect to traffic flows, speeds and percentage of right turners at those other junctions, it cannot be determined that they are directly comparable to the appeal junction in those respects. However, nor can it be determined that they are not. Nonetheless, the improved accident record at those other junctions following the introduction of a fully signalised right turn phase appears to me to support, for the most part, the HA assessment that the practice of gap-seeking across 2 lanes was previously a contributory factor to the incidence of accidents<sup>5</sup>. In relation to this matter, I give greater weight to the assessment of the HA, as it is likely to be more familiar with the historic operation of its network, than that of the appellants' highway witnesses.
50. The appellants consider that an arrangement which allows vehicles turning right across two opposing lanes by gap-seeking is common. In support of that view, they have identified 2 junctions in the area where the HA has not prevented right turning vehicles from crossing 2 lanes without signalling: A27/Ranvilles Lane; and, A27/Sandringham Road. However, the HA has indicated that there is a history of accidents associated with right turn manoeuvres at the A27/Ranvilles Lane junction, the most recent having occurred in 2020, and the junction will be taken forward on the HA's provisional list for safety remedial measures during 2021/2022. The A27/Sandringham Road junction is located close to the point at which the speed limit reduces from 40 mph to 30 mph on the A27. Furthermore, Sandringham Road is a cul-de-sac serving far fewer dwellings than would be the case at Newgate Lane as a result of either of the appeal A or B schemes, and so the number of daily or peak hour right turning movements associated with it would be likely to be much lower than the appeal junction. To my mind, the circumstances associated with these two junctions do not lend support to the appeal schemes.

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<sup>5</sup> Whether a 3-year or 10-year accident record period is considered.

51. The appellants argue that in circumstances where a vehicle is waiting at the proposed junction for an approaching northbound offside vehicle to pass before turning right onto Newgate Lane, it is likely that a nearside vehicle screened from view by that offside vehicle would also have passed when the waiting vehicle starts to cross the lanes. To my mind, that would not necessarily be the case, as it would depend on the degree to which the pair of northbound vehicles are staggered and their relative speeds. Some screened vehicles may be slowing to turn left into Newgate Lane causing a right turning vehicle to pause in the offside lane when that previously screened nearside vehicle comes into view and that would potentially bring it into conflict with other approaching offside vehicles. Furthermore, it is foreseeable that right turning drivers seeking gaps may be faced with a stream of traffic in both opposing lanes and with some variation in approach speeds. A nearside vehicle moving past an offside stream of traffic may be unsighted until a late stage and may be closing the gap faster than the right turning driver had anticipated, leading to conflicting movements.
52. With reference to the appellants' *Transport Assessment Technical Note-Junction Modelling Results (TATN)*, by the 2024 design year, the cumulative impact of each appeal scheme and other developments would be likely to result in a marked increase in the total number of right turning vehicles into Newgate Lane. Furthermore, the appellants' traffic modelling predicts that in the AM peak there would not be any suitable gaps in free-flowing northbound traffic for right turning vehicles to cross. However, the proposed signalling arrangement would not prevent drivers from gap-seeking and they may still attempt to do so, if they thought that they could get across, rather than waiting for the intergreen period or the indicative arrow. The modelling predicts that in the PM peak almost all of the right turning traffic would cross in gaps in free-flowing northbound traffic.
53. Against this background, I share the concern of the HA that right turning vehicles gap-seeking to cross 2 oncoming lanes at the proposed junction poses a far greater risk of collisions than the existing arrangement and a significant risk to highway safety.
54. I conclude that the proposed junction arrangement, whether one or both of the appeal schemes were to proceed, would have an unacceptable impact on highway safety. Furthermore, in my view, this harm could not be reduced to an acceptable level through the imposition of a condition(s). As I have indicated, the Council and appellants agree that a fully signalised right turn stage would operate unacceptably in terms of capacity. The proposals would conflict with LP2 Policy DSP40(v), which seeks to ensure that development would not have any unacceptable traffic implications, and it would not fit well with the aims of LP1 Policy CS5(3) insofar as it supports development which does not adversely affect the safety of the local road network. These Policies are consistent with the Framework, which indicates that development should only be prevented or refused on highway grounds in limited circumstances, including if there would be an unacceptable impact on highway safety. This weighs very heavily against the schemes.

***Sustainably located, with reference to accessibility***

55. LP1 Policy CS15 indicates that the Council will promote and secure sustainable development by directing development to locations with sustainable transport

- options. LP1 Policy CS5 indicates that development proposals which generate significant demand for travel and/or are of high density, will be located in accessible (includes access to shops, jobs, services and community facilities as well as public transport) areas that are or will be served by good quality public transport, walking and cycling facilities. LP2 Policy DSP40(ii) seeks to ensure that proposals are sustainably located adjacent to the existing urban settlement boundaries.
56. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and identifies that this should be taken into account in decision-making. I acknowledge that the appeal sites are in the countryside. However, they are situated in a relatively narrow countryside gap between urban areas, rather than a larger rural area where opportunities for sustainable transport could reasonably be expected to be limited. In any event, consistent with Development Plan Policies CS15, CS5 and DSP40, the Framework also indicates that significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
57. The appeal sites are not near to, but are set well apart from: the western, urban area boundary of Bridgemary, as defined by the *Gosport Borough Local Plan 2011-2029 Policies Map*, which is to the east of the appeal sites on the far side of an area of agricultural land that adjoins the eastern side of Newgate Lane East; and, further from the southern settlement boundary of Fareham, which is defined by the LP2 Policies Map Booklet and is located some distance further north at the edge of HMS Collingwood and Speedfields Park. Peel Common does not have a defined urban settlement boundary. As such, I consider that the sites are not adjacent to any existing urban settlement boundary, contrary to the requirement of LP2 Policy DSP40(ii).
58. I acknowledge that the Council appears to have taken a flexible approach to the 'adjacency' requirement in a number of other cases. However, in the cases drawn to my attention, with the exception of the site to the south of Funtley Road, development has taken place or been approved between the application site and the nearest existing urban settlement boundary. In the case of the site to the south of Funtley Road, it abuts a highway on the opposite side of which is some of that other development and the site boundary is a relatively short distance across undeveloped land from an existing urban settlement boundary. The circumstances are not directly comparable to those in the cases before me, in relation to which the sites would be set further apart across undeveloped land from the nearest existing urban settlement boundary. In any event, each case must be considered primarily on its own merits and in my view, the Council's approach elsewhere would not justify harmful development of the appeal sites. I give little weight to those decisions of the Council. Furthermore, appeal decision Ref. APP/L3625/X/16/3165616 considered adjacency in the context of the relationship between a highway and gates set back from it by around 1 metre. The circumstances are not comparable to those in the cases before me and are of little assistance.
59. I turn then to consider the accessibility of the sites with reference to modes of transport. The *National Travel Survey, 2019* (NTS), identifies, amongst other things, the average trip length and duration in England by all modes of travel for the trip purposes of: commuting; education; personal business; shopping; sport (participate); and, entertainment/public activity. There are a range of

- employment, education, retail, health, sport, and leisure uses well within those average distances and durations of the appeal sites. This indicates that there are likely to be some opportunities for residents of the proposed developments to travel less when compared to the national average journey distances and durations, and in this context, the locations of the appeal sites limit the need to travel. However, the NTS 'all modes of travel' includes, amongst other modes, car travel and so it does not automatically follow that the proposed developments would be served by good quality public transport, walking or cycling facilities.
60. The *Manual for Streets* indicates that walkable neighbourhoods are typically characterised by having a range of facilities within around 800 metres walking distances of residential areas which residents may access comfortably on foot. However, it indicates that this is not an upper limit and walking offers the greatest potential to replace short car trips, particularly those under 2 kilometres. This is echoed by the Department for Transport *Local Cycling and Walking Infrastructure Plans (2017)*, which indicates that for walking, 'the distances travelled are generally...up to 2 kilometres'.
61. The Institute of Highways and Transportation's (now CIHT) *Guidelines for Providing for Journeys on Foot, (2000)* (PfJoF) gives more detailed guidance, setting out, with reference to some common facilities, suggested desirable, acceptable and preferred maximum walking distances which range up to a preferred maximum of 2 kilometres for some facilities. The approach is consistent with CIHT's more recent *Planning for Walking, April 2015* (PFW), which indicates that most people will only walk if their destination is less than a mile away (equivalent to around 1.6 kilometres) and about 80% of journeys shorter than 1 mile are made wholly on foot, the power of a destination determining how far people will walk to get to it. To illustrate the point it indicates that while for bus stops in residential areas, 400 metres has traditionally been regarded as a cut-off point, people will walk up to 800 metres to get to a railway station, which reflects the greater perceived quality or importance of rail services.
62. Having regard to the Department for Transport's NTS (Table NTS0303-2020 update), there have been no significant changes in the average walking trip length in the period 2002-2019. To my mind, this indicates it is unlikely that attitudes towards walking trip length have altered to any great extent since the publication of PfJoF. This is consistent with the position taken by my colleague who dealt with appeal Ref. APP/A1720/W/19/3230015, which related to a site elsewhere, in Portchester. I am content therefore, that the PfJoF guidance on acceptable walking distances is not out of date and it provides a reasonable basis for the assessment of whether, having regard to the locations of the appeal sites, walking can be regarded as a genuine choice of transport modes. In addition, PFW indicates that propensity to walk is not only influenced by distance, but also by the quality of the experience, having regard to factors such as the attractiveness and safety of the route.
63. I note that the Council's position regarding the accessibility of the sites is not based on an objection in relation to that matter raised by the Highway Authority, but rather an assessment undertaken by a planning professional with reference to PfJoF, amongst other things. In my view, it does not follow that the weight attributable to the Council's assessment should be reduced. As reported by the appellants, the PfJoF states it is the task of the professional

- planner or engineer to decide if a lower standard is acceptable in given circumstances.
64. There is no dispute that there are a range of services and facilities within 2 kilometres of the appeal sites. However, to my mind, in the absence of any consideration of the 'power of the destinations' and the quality of the experience that is of little assistance. Applying the PfJoF approach, which reflects the 'power of destination', facilities and amenities within its 'acceptable' walking distances of the southern and linked appeal sites are limited to a primary school, a church, and a recreation ground. Within its 'preferred maximum' walking distances there are additionally a college campus (CEMAST), a limited number of small shops and a pub in Bridgemary, an employment area (HMS Collingwood) and four other schools.
  65. However, the appeal sites only fall within the catchment area of one of the five schools, Crofton Secondary School, which is barely within the preferred maximum walking distance. Whilst I understand that Crofton Anne Dale Infant and Junior School, which would serve the appeal sites, is within the maximum walking distances for schools identified by the Department for Education, it falls outside the PfJoF preferred maximum walking distances.
  66. Although PFW indicates that in residential areas, 400 metres has traditionally been regarded as a cut-off point, the CIHT's more recent *Buses in Urban Developments, January 2018* (BUD) provides more detailed guidance. It identifies maximum walking distances between developments and bus stops with the intention of enabling the bus to compete effectively with the car and to benefit a wide range of people with differing levels of motivation and walking ability. It recommends a maximum walking distance of 300 metres to a bus stop served by a service which is less frequent than every 12 minutes.
  67. The SoCGT indicates that the closest bus stop to the appeal sites is on Newgate Lane East and only the southern site would meet that BUD recommendation. Furthermore, the buses return approximately with a frequency of every 75 minutes in each direction and the first northbound bus in the morning, towards Fareham, departs from the bus stop at 09:12 hrs. Notwithstanding that the bus trip duration to the train station may be shorter than the national average trip time by local bus of 36 minutes, to my mind, the start time and frequency of the service would limit the attractiveness of the service as far as northbound commuters are concerned. Whilst there is a bus stop on Tukes Avenue served by a more frequent service, it is significantly further away from the sites than the maximum walking distance for high frequency services recommended by BUD.
  68. The SoCGT indicates that the closer of the 2 appeal sites is some 3.7 kilometres from Fareham Railway Station, a distance well beyond the 800 metres identified by PFW.
  69. I note that the PfJoF was one of the documents that informed the accessibility standards set out in the Council's *Fareham Local Plan 2037 Background Paper: Accessibility Study 2018*, the application of which in the cases before me appears not to result in a significant difference in outcome compared with the application of the PfJoF guidance.
  70. The appellants have applied a Walking Route Audit Tool to the local walking routes, which assesses the attractiveness, comfort, directness, safety, and

coherence of the routes. Whilst a number of the findings are disputed by the Council, I consider that the current condition of the likely route east of the sites to the limited number of shops and the pub referred to in Bridgemaury is of greatest concern. That walking route would involve crossing Newgate Lane East and walking along Brookers Lane. However, difficulties crossing Newgate Lane East, due to the speed and volume of traffic, would be satisfactorily addressed by the proposed provision of a Toucan crossing, funded by a contribution secured by the UUB. Currently, the character of the initial section of Brookers Lane would be likely to dissuade users, due to a lack of street lighting and the potential for people to conceal themselves from view from approaching walkers in trees along the southern side of the route, giving rise to potential safety concerns. However, I consider that these matters could be satisfactorily addressed through the provision of unobtrusive lighting and fencing along the southern side of the route, which would be unlikely to have a material adverse impact on the character or appearance of the locality and could be secured by condition. I acknowledge that these improvements may be of some benefit to the wider community, not just residents of the appeal sites, to which I attribute limited weight.

71. In my judgement, the quality of local walking routes could be made acceptable. However, applying the PfJoF and more recent BUD guidance on walking distances to destinations, the number and range of facilities and amenities within the ranges identified would be limited. I consider overall that the accessibility of the area by walking would be poor and, for the most part, walking cannot be regarded as a genuine choice of transport mode.
72. The site subject of previous appeal decision Ref. APP/A1720/W/19/3230015, was found to satisfy LP2 Policy DSP40(ii). However, the factors taken into consideration in relation to that matter included, amongst other things, that the site was well related to the existing urban settlement boundary for Portchester and close to many other dwellings in Portchester, and accessibility to local services and facilities would be similar to that for many of the existing residents of the area. Those circumstances are not directly comparable to those in the cases before me. The appeal sites are not well related to an existing urban settlement boundary or close to dwellings within one. Whilst accessibility to local services and facilities would be similar for existing residents of Peel Common, it is a small settlement relative to which each of the appeal schemes would be larger in terms of households. Under the circumstances, I consider that the policy finding of the previous appeal decision is of little assistance in these cases.
73. Within 5 kilometres of the appeal sites, which is a distance commonly regraded as reasonable cycling distance, there is a much greater range and number of services, facilities, amenities, and employment sites. Furthermore, there are shared cycle pedestrian/cycle routes in the vicinity of the appeal sites which would facilitate access by bicycle to the areas to the north, south, east, and west of the sites. I consider therefore that the sites would be served by good quality cycling facilities and cycling could be regarded as a genuine choice of transport modes. However, having regard to the NTS for 2019, in comparison with 250 trips per person per year associated with walking, only 16 trips per person per year were associated with cycling. To my mind, it is likely therefore, that relatively few future residents of the appeal sites would cycle, reducing the weight attributable to this factor.

74. As I have indicated, the bus services available within the maximum walking distances recommended by BUD are very limited and the nearest train station is located well outside the PfJoF preferred maximum walking distance. I acknowledge that the sites would be within reasonable cycling distances of Fareham Train Station and residents could drive there by car. Nonetheless, I consider overall that the sites would not be well served by good quality public transport, the accessibility of the area by public transport would be poor and, for the most part, it cannot be regarded as a genuine choice of transport modes.
75. The Framework indicates that in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be-or have been-taken up, given the type of development and its location. A Travel Plan for each site has been agreed by the HA. However, in my view, it does not automatically follow that the appeal sites would be sustainably located with reference to accessibility. The *Planning Practice Guidance* (PPG) indicates that the primary purpose of a Travel Plan is to identify opportunities for effective promotion and delivery of sustainable transport initiatives, for example walking, cycling, public transport and tele-commuting, in connection with both proposed and existing developments and through this to thereby reduce the demand for travel by less sustainable modes.
76. The proposed Travel Plan measures include, amongst other things, the provision of: information to promote sustainable modes of travel; electric vehicle charging/parking facilities on the sites; a Travel Plan Coordinator as well as contributions towards: the improvement of the Newgate Lane East crossing at Woodcote Lane/Brookers Lane; the provision of shared pedestrian/cyclist infrastructure along parts of the routes between the appeal sites and local schools; and, supporting the use (travel vouchers for residents) and operation of the existing limited bus service in the vicinity of the sites for a number of years. Having regard to these matters, I am satisfied that a number of appropriate opportunities to promote sustainable transport modes have been provided for, in accordance with the aims of LP1 Policy CS15 and the Framework. However, as identified above, I consider that the attractiveness of the existing bus service to commuters would be limited and, in my view, this casts significant doubt over the indicative Travel Plan target which anticipates an increase in bus service use, notwithstanding some provision for travel vouchers.
77. I conclude that the appeal sites would be in a location with some, albeit limited, sustainable transport options and in this respect would accord with LP1 Policy CS15. However, the limitations are such that they would not be in an accessible area, with particular reference to public transport and walking facilities, and I do not regard the sites as being sustainably located adjacent to an existing urban settlement boundary. Insofar as they seek to ensure that development is sustainably located with reference to accessibility, I consider overall that the proposals would conflict with LP1 Policy CS5, LP2 Policy DSP40 and the Framework.

### ***Spatial development strategy***

78. The reasoned justification for LP1 Policy CS22 indicates that gaps between settlements help define and maintain the separate identity of individual

- settlements. It states that Strategic Gaps do not have intrinsic landscape value but are important in maintaining the settlement pattern, keeping individual settlements separate and providing opportunities for green infrastructure/green corridors. The Policy indicates that development proposals will not be permitted either individually or cumulatively where it significantly affects the integrity of the gap and the physical and visual separation of settlements.
79. The appellants place some reliance on the proposed allocation of land for development in the Fareham-Stubbington Gap in the Regulation 18 consultation draft of the emerging *Fareham Local Plan 2036* (LPe). This included allocation HA2 for residential development on land between Newgate Lane East and Bridgemary, within the Fareham-Stubbington Gap. Whilst the Regulation 19 draft of the LPe did not include that allocation, it was based on the assumed imposition of Government's proposals to introduce a new Standard Method, which was not subsequently supported. However, going forward, there is no certainty that the proposed allocation of HA2 will be reinstated by the Council. Furthermore, even if it were, that proposed allocation was the subject of objections at the earlier stage and there is no dispute that the emerging plan is at a relatively early stage towards adoption. Under the circumstances, I give little weight to the possibility that proposed allocation HA2 would form part of the LPe when adopted.
80. The appeal sites fall within the Fareham-Stubbington Gap. The TR indicates that the purpose of this gap is to avoid coalescence between the settlements of Fareham and Bridgemary with Stubbington and Lee-on-the-Solent. Drawing a straight line east-west across the gap between Stubbington and Bridgemary, the appellants have estimated that the appeal schemes would reduce the gap from some 1.6 km to around 1.1 km. However, to my mind, that cross-country approach does not represent the manner in which the gap is likely to be experienced and, as a result, generally understood.
81. Consistent with the TR, I consider that a key vehicle route between the settlements of Fareham and Stubbington from which the Strategic Gap is experienced is along Newgate Lane East (between Fareham and Peel Common Roundabout)/B3334 Gosport Road (between Peel Common Roundabout and Marks Road, Stubbington). Along that route travellers leave behind the urban landscape of Fareham at HMS Collingwood and Speedfields Park and travel to the edge of Stubbington, via Peel Common Roundabout, through an area which includes the appeal sites and is predominantly characterised by undeveloped countryside. The Strategic Gap designation washes over some development, which includes Newlands' Solar Farm, Peel Common Wastewater Treatment Works (WWTW) and the settlement of Peel Common. However, along the route identified, intervening planting prevents the WWTW from being seen and limits views of the low-profile solar farm to glimpses. Furthermore, I consider that, when seen from those highways to the east and south, 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.
82. In each case, the proposals would involve substantial development to the east of Peel Common and, as identified above, it would be sufficient to tip the balance of the character of the area between Peel Common, Bridgemary and Fareham from predominantly rural to suburban. Whilst Fareham, Peel Common and Bridgemary would remain physically separate, the contribution of this area

to the sense of separation provided by the Strategic Gap would be greatly diminished. I acknowledge that the proposals would not materially alter the experience of the Strategic Gap along the B3334 Gosport Road, between Peel Common and development at Marks Road, as they would not be visible from there. However, the appellants have estimated that 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 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.

83. I consider overall that the proposals would cause significant harm to the integrity of the Fareham-Stubbington Gap and the physical and visual separation of settlements, with particular reference to the experience of travellers along the Newgate Lane East section of the Newgate Lane East/B3334 Gosport Road key route, contrary to the aims of LP1 Policy CS22.
84. Furthermore, in my judgement, the impact on the integrity of the Strategic 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 an existing urban settlement boundary and Peel Common were to remain a small, isolated ribbon of development within the gap. The proposals would fail to minimise any adverse impact on the Strategic Gap, contrary to the aim of LP2 Policy DSP40(iii).
85. There is no dispute that the proposals would accord with criterion (i) of LP2 Policy DSP40, being relative in scale to the demonstrated five-year housing land supply shortfall. Turning then to criterion iv), which requires a demonstration that the proposals would be deliverable in the short term. The current tenant of appeal site A has suggested that the formal procedures associated with the surrender of the agricultural tenancy may delay implementation of that scheme. However, based on the timeline and formal procedures for obtaining possession outlined by the appellants, it appears to me that delivery in the short term would be possible<sup>6</sup>. In any event, this matter could be satisfactorily addressed, in relation to both sites, through imposition of conditions that required reserved matters applications to be made within 12 months of the grant of planning permission and the commencement of development within 12 months of the approval of reserved matters, as suggested by the appellants. Under the circumstances, I am satisfied that the proposals would not conflict with criterion iv) of LP2 Policy DSP40. Nonetheless, they would conflict with criteria ii), iii) and v) and I consider overall that each proposal would conflict with LP2 Policy DSP40 taken as a whole.
86. I conclude that each of the schemes, which would conflict LP1 Policy CS22 and LP2 Policy DSP40, would not accord with and would undermine the Council's Spatial Development Strategy.

### ***Housing land supply***

87. The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated

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<sup>6</sup> Michelmores LLP letter dated 20 January 2021 and Lester Aldridge LLP letter dated 3 February 2021.

against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum. Furthermore, having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period. As I have indicated, the Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply. However, they agree on either basis that the shortfall is material and it is not necessary to conclude on the precise extent.

88. A significant proportion of the difference between the supply figures of the Council and the appellants is associated with applications with a resolution to grant planning permission (709 units) and allocations (556 units).
89. In respect of the majority of the sites with resolutions to grant planning permission, which date from 2018, it remains necessary, before planning permission could be granted in each case, for the Council to complete Appropriate Assessment (AA) to establish whether the scheme would have a significant effect upon European Protected Sites. To inform the AA, it is necessary for the developers to demonstrate that their schemes would not increase the levels of nitrates entering the Solent. In order to facilitate that process, in September 2020, the Council established a legal framework through which developers/applicants can purchase nitrate credits associated with land use at Little Duxmore Farm (LDF). However, at the Inquiry, the Council was unsure whether there would be sufficient capacity at LDF to provide mitigation in relation to all the identified sites and whilst it is seeking to secure additional capacity elsewhere, the associated negotiations are not yet complete. Furthermore, since September 2020, only a relatively small number of dwellings have been taken through this process culminating in the grant of planning permission. With respect to the other sites, which together account for over 500 units, I consider that in the absence of favourably completed AAs there is significant doubt about the deliverability of housing within the five-year period on those sites. Furthermore, AA is not the only issue. In a number of the cases, while some progress has been made, necessary planning obligations have yet to be formally secured. This adds to the uncertainty.
90. The Welborne allocation accounts for 450 units included in the Council's assumed supply figure. The site was subject to a resolution to grant outline planning permission for up to 600 dwellings in October 2019, subject to planning obligations being secured. Although the Council expected the planning obligations to be secured pursuant to section 106 of the *Town and Country Planning Act 1990* by the end of the summer 2020, this was not achieved. In December 2020, the developer submitted amended plans for the site. Whilst in January 2021, the Council resolved to grant planning permission for the revised scheme, it would also be subject to planning obligations and a pre-commencement condition would be imposed to ensure that funding had been secured for the improvement of junction 10 of the M27. At the Inquiry, the Council confirmed that whilst funding sources have been identified, not all the necessary agreements are in place to secure the funds. In light of the limited progress made since October 2019 and the outstanding areas of

uncertainty, I consider it likely that housing delivery on that site within the five-year period will fall well short of that assumed by the Council.

91. Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic<sup>7</sup>.
92. The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come.
93. The appellants anticipate that around 123 of the 190 proposed appeal dwellings could be completed within the current five-year period. Against this background, I consider it likely that each of the appeal schemes would make a modest contribution towards reducing the significant shortfall in housing land supply. Having had regard to other appeal decisions drawn to my attention<sup>8</sup>, I give those contributions substantial weight.

### **Other matters**

#### *Planning obligations*

94. Each of the schemes is supported by a formally completed unilateral undertaking: appeal site A-UUA; and appeal site B-UUB. Amongst other things, they include provisions for: a Solent Recreation Mitigation Strategy contribution; on-site open space and play area provision and maintenance contributions; an education contribution; provisions to secure on-site Affordable Housing delivery, sustainable travel measures as well as the implementation of a Travel Plan. UUB also makes provision for: the implementation of a Chamomile Management Plan, for the purpose of conserving the ecological features in the Chamomile and Meadow areas of the site, consistent with the aims of LP2 Policy DSP13; and, a Toucan crossing contribution. Having had regard to the Council's *Community Infrastructure Levy Regulations Compliance Statement, February 2021*, I consider that the UUs would accord with the provisions of Regulation 122 of the *Community Infrastructure Regulations 2010* and the tests of obligations set out in the Framework. Furthermore, I conclude that the infrastructure provisions referred to above would accord with the aims of LP1 Policy CS20.
95. With reference to the ecological assessments submitted in support of the applications, the appellants have indicated that, subject to mitigation measures which would be secured either by the submitted UU's or by condition, the schemes would each provide moderate ecological benefits for the sites, consistent with LP1 Policy CS4 and LP2 Policy DSP13. Furthermore, measures would be incorporated in the design of the schemes to limit energy and water consumption as well as carbon dioxide emissions, which could be secured by condition and would amount to minor environmental benefits, consistent with

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<sup>7</sup> Statements of Common Ground, January 2021 (paragraphs 7.14).

<sup>8</sup> Such as APP/A1530/W/19/3223010, APP/G1630/W/18/3210903, APP/E5900/W/19/3225474, APP/N1730/W/18/3204011 and APP/G1630/17/3184272.

LP1 Policy CS16. I have no compelling reason to take a different view. However, in my judgement, they do not weigh significantly in favour of the schemes, as the benefits would be only moderate/minor and the Framework commonly requires the provision of net gains for biodiversity, minimisation of energy consumption and the prudent use of natural resources.

96. UUC would secure off-site mitigation for the loss of a low use Solent Wader and Brent Goose site. Having regard to the measures secured by UUA, UUB and UUC and with reference to the 'Shadow Habitat Regulations Assessments' submitted in support of the applications, the appellants have indicated that the proposals would not have an adverse effect on the integrity of any European Protected Sites, consistent with the aims of LP2 Policies DSP14 and DSP15, and this would weigh as neutral in the planning balance. These matters are not disputed by the Council.
97. It is common ground that there is an unmet Affordable Housing need in Fareham Borough. The shortfall appears to be sizeable. Looking forward, the Council's adopted *Affordable Housing Strategy (2019)* identifies a need for broadly 220 Affordable Homes per annum over the period to 2036. This can be compared to the delivery of an average of 76 Affordable Homes per annum in the period 2011-2019, well below the need identified for that period by the Council's *Housing Evidence: Overview Report (2017)*. 40% of the proposed dwellings in each case would comprise Affordable Housing, consistent with the requirements of LP1 Policy CS18. Furthermore, I understand that the commercial profits of Bargate Homes Ltd, which is owned by Vivid and has contractual control of both sites, are reinvested in Vivid's wider Affordable Housing Programme. I consider that the proposals would amount to meaningful contributions towards addressing the identified need and the Affordable Housing benefits attract substantial weight in each case.
98. The Council considers that the public open space provision shown on the illustrative masterplans submitted in support of the applications would be sufficient to meet the requirements of LP1 Policy CS21 and I have no reason to disagree. Whilst I acknowledge that the proposed public open space may be of some value to existing local residents, given the accessibility of the countryside thereabouts, I consider that any benefit in that regard would be small and I give it little weight.

*Economic benefits*

99. The Framework gives encouragement to development that would support economic growth. The proposals would be likely to give rise to a range of economic benefits. For example, the appellants have estimated that the proposed households would be likely to generate expenditure in the region of £6.4 million per annum, some of which would be spent locally. Furthermore, the proposals could support an estimated 191 jobs during the three-year build programme and could generate an additional £33.8 million of gross value added for the regional economy during that period. The proposals would help to support the growth of the economy, which has been adversely affected by the current coronavirus pandemic. I give the economic benefits likely to result from the proposals in each case substantial weight.

*Best and most versatile agricultural land*

100. Appeal site B contains land classified as best and most versatile (BMV) agricultural land, which would be lost as a result of the scheme, contrary to the aims of LP1 Policy CS16, which seeks to prevent the loss of such land. However, with reference to the Framework, which indicates that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the economic and other benefits of BMV agricultural land, I consider that LP1 Policy CS16 is unduly onerous. Furthermore, as BMV agricultural land makes up only a very small proportion of the site, I share the view of the appellants that the weight to be given to the loss is very limited.

*Privacy*

101. At present, Hambrook Lodge occupies an isolated position in the countryside, set well apart from other dwellings. In this context the proposed developments on land adjacent to that property would be likely to have some effect on the privacy of the existing residents. However, the elevations of the dwelling that contain the majority of its habitable room windows are set back from the boundaries shared with the appeal sites. I consider that it would be possible to ensure, through careful design and layout of the schemes controlled at the reserved matters stage, that reasonable levels of privacy would be maintained in keeping with the aims of LP1 Policy CS17.

*Community services and facilities*

102. I do not share the concerns raised by a number of residents of the Borough of Gosport that the proposals would adversely affect their community services and facilities. As indicated above, it is likely that spending associated with the schemes would benefit the local economy. As regards facilities, I understand that the appeal sites are not within the catchment area of Gosport schools. Whilst some future residents may wish to use the recreation ground situated to the southeast on the other side of Newgate Lane East, there is no compelling evidence before me to show that the numbers would be large or that such activity would be problematic.

***Planning balance***

103. The Framework indicates, with reference to succinct and up-to-date plans, that the planning system should be genuinely plan-led. For decision making this means approving development proposals that accord with an up-to-date Development Plan without delay. The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites and so in these cases the relevant policy for determining the acceptability of residential development on the site is LP2 Policy DSP40. I consider that each of the schemes would conflict overall with LP2 Policy DSP40. However, in these cases, that is not the end of the matter.
104. LP1 Policy CS2 sets out the housing development needs in the plan period, and Policy CS6 establishes the settlements and allocations to deliver development needs. However, Policy CS2, which pre-dated the publication of the Framework, does not purport to represent an up-to-date Framework compliant assessment of housing needs. The housing requirement set out in the Development Plan has not been reviewed within the last 5 years and so the

five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This generates a higher figure. To my mind, it follows that LP1 Policies CS2 and CS6 are out-of-date. Furthermore, against this background, I consider that the weight attributable to conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6, which place strict controls over development outside settlement boundaries, is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements<sup>9</sup>.

105. Furthermore, as the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, under the terms of paragraph 11 of the Framework it follows that the policies which are most important for determining the appeals are deemed out of date. The Framework indicates that decisions should apply a presumption in favour of sustainable development and, where the policies which are most important for determining the application are out of date, this means granting planning permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole; or, the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. This approach is reflected in LP2 Policy DSP1.
106. Under these circumstances, I consider that little weight is attributable to the identified conflicts with LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6. This is reinforced by my earlier finding that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies would be reduced.
107. LP2 Policy DSP40 is also deemed out of date for the purposes of paragraph 11 of the Framework. However, I consider, for a number of reasons, it does not automatically follow that conflicts with this Policy also attract little weight, contrary to the approach of my colleague who dealt with appeal decision Ref. APP/A1720/W/18/3209865.
108. Firstly, the DSP40 contingency seeks to address a situation where there is a five-year housing land supply shortfall, by providing a mechanism for the controlled release of land outside the urban area boundary, within the countryside and Strategic Gaps, through a plan-led approach. I consider that in principle, consistent with the view of my colleague who dealt with appeal Ref. APP/A1720/W/18/3200409, this approach accords with the aims of the Framework.
109. Secondly, consistent with the Framework aim of addressing shortfalls, it requires that (i) the proposal is relative in scale to the demonstrated supply shortfall and (iv) it would be deliverable in the short-term.
110. Thirdly, criteria (ii) and (iii) are also consistent with the Framework insofar as they: recognise the intrinsic character and beauty of the countryside by seeking to minimise any adverse impact on the countryside; promote the creation of high quality places and having regard to the area's defining characteristics, by respecting the pattern and spatial separation of settlements;

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<sup>9</sup> CDK5-Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37, para 63.

and, seek to ensure that development is sustainably located. They represent a relaxation of the requirements of Policies LP1 Policies CS14 and CS22 as well as LP2 Policy DSP6 in favour of housing land supply. However, I consider that the shortfall in the Framework required five-year housing land supply, which has persisted for a number of years and is larger than those before my colleagues<sup>10</sup>, indicates that the balance they strike between those other interests and housing supply may be unduly restrictive. Under these circumstances, in my judgement, considerable, but not full weight is attributable to conflicts with LP2 Policy DSP40(ii) and (iii).

111. Fourthly, insofar as LP2 Policy DSP40(v) seeks to avoid an unacceptable impact on highway safety, with particular reference to traffic implications, it is consistent with the Framework and conflict with that requirement would be a matter of the greatest weight.
112. Whilst the proposals would accord with criteria i) and iv), they would conflict with criteria ii), iii) and v), causing significant harm to the character and appearance of the area, having an unacceptable effect on highway safety, they would not be sustainably located with reference to accessibility and they would fail to minimise any adverse impact on the Strategic Gap. I have found that the proposals would conflict with LP2 Policy DSP40, undermining the Council's Spatial Development Strategy. I consider overall that these matters weigh very heavily against each of the proposals.
113. In each case the proposals would provide a mix of housing types and styles. They would make meaningful, albeit modest, contributions towards addressing the shortfall in the five-year supply of deliverable housing land as well as the need for Affordable Housing supply. The appeal schemes would also be likely to provide employment opportunities and economic benefits to the area. In these respects the proposals would be consistent with the Framework, insofar as it seeks to significantly boost the supply of homes, provide for the size, type and tenure of housing needed for different groups in the community and to support economic growth. I give those benefits substantial weight. I give little weight to other identified benefits, such as the proposed measures to secure net gains for biodiversity, the minimisation of energy consumption and the prudent use of natural resources. Although I give a number of the benefits substantial weight, in my judgement, it would fall well short of the weight attributable to the harm identified.
114. I consider on balance that, in each case, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits and the schemes would not represent sustainable development under the terms of either LP2 Policy DSP1 or the Framework. In light of these findings, it is unnecessary for me to undertake an Appropriate Assessment. However, if I had done so and a positive outcome had ensued, it would not have affected the planning balances or my conclusions on these appeals.

### **Conclusions**

115. Whilst acknowledging that appeal scheme A would conform with some Development Plan policies, I conclude on balance, with particular reference to LP2 Policy DSP40, that the proposal would conflict with the Development Plan taken as a whole. Furthermore, the other material considerations in this case

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<sup>10</sup> APP/A1720/W/18/3199119, APP/A1720/W/18/3200409

would not justify a decision other than in accordance with the Development Plan. For the reasons given above, I conclude that appeal A should be dismissed.

116. Whilst acknowledging that appeal scheme B would conform with some Development Plan policies, I conclude on balance, with particular reference to LP2 Policy DSP40, that the proposal would conflict with the Development Plan taken as a whole. Furthermore, the other material considerations in this case would not justify a decision other than in accordance with the Development Plan. For the reasons given above, I conclude that appeal B should be dismissed.

*I Jenkins*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

**Mr D Lintott**

Of Counsel

He called

**Mr I Dudley**

BSc(Hons) MICFor CEnv CMLI

**Mr C Whitehead**

BEng CEng

**Mr J Mundy**

MSc IMICE

**Mr N Sibbett**

CEcol CMLI CEnv MCIEEM

**Ms J Parker**

BA(Hons) MA MRTPI

**Mr R Wright** (conditions/obligations)

**Mr N Gammer** (conditions/obligations)

MSc MCIHT MTPS

**H Hudson** (conditions/obligations)

Solicitor

Lockhart Garratt Ltd

SYSTRA Ltd

Hampshire County Council

The Landscape Partnership

Adams Hendry Consulting Ltd

Fareham Borough Council

Hampshire County Council

Southampton City Council

### FOR THE APPELLANTS:

**Mr C Boyle**

QC

He called

**Mr J Atkin**

BSc(Hons) DIP LM CMLI

**Mr N Tiley**

ARTPI

**Miss M Hoskins**

BA(Hons) MCIHT

**Mr A Jones**

BSc(Hons) MCIHT

**Mr D West**

MEnv Sci(Hons) CEnv MCIEEM

**Mr D Weaver**

BA(Hons) MA MRTPI

**Mr C Marsh** (conditions/obligations)

Pegasus Group

Pegasus Group

Red Wilson Associates

Pegasus Group

WYG

Pegasus Group

Pegasus Group

### INTERESTED PERSONS:

**County Councillor P Hayre**

The Crofton Division of Fareham

**Mrs A White**

**Mr A Thomas**

**Borough Councillor J Forrest**

The Stubbington Ward

**Mr B Marshall**

**County Councillor S Philpott**

The Bridgemary Division

**Mrs A Roast**

**Borough Councillor C Heneghan**

The Stubbington Ward

Interested party

Local resident

Local resident

Interested party

Fareham Society

Interested party

Lee Residents' Association

Interested party

## DOCUMENTS

- 1 Letters notifying interested parties of appeals A and B.
- 2 Appeals notification responses
- 3 Councillor Philpott-updated proof of evidence
- 4 Ms Parker-revised appendices to proof of evidence and errata
- 5 Council-opening statement
- 6 Appellants-opening statement
- 7 Councillor Forrest-proof of evidence
- 8 Statement of Common Ground (Transport)
- 9 Fareham Society-updated proof of evidence
- 10 Councillor Philpott-updated proof of evidence
- 11 Mr Thomas-email dated 10 February 2021
- 12 Red Wilson Associates-Delay Tables Summary Note
- 13 Mr Thomas-email dated 11 February 2021
- 14 Gosport Borough Council-Additional submissions regarding the Newgate Lane South Appeals (12 February 2021)
- 15 Community Infrastructure Levy Regulations Compliance Statement (including education contributions email dated 9 November 2020 and Planning Obligations Supplementary Planning Document
- 16 Bargate Homes-Delivery Rate Update, dated 16 February 2021
- 17a Composite masterplan
- 17b Settlement boundaries proximity plan
- 17c Land south of Funtley Road Committee Report Ref. P/18/0067/OA
- 17d Consolidated conditions schedule
- 18 Mrs White-proof of evidence
- 19 Natural England guidance documents and Conservation Objectives.
- 20 Gosport Borough Council-Additional submissions regarding the Newgate Lane South Appeals (12 February 2021)-references included.
- 21 Land south of Funtley Road Committee Report Ref. P/18/0067/OA, dated 18/07/2018.
- 22 Ms Parker- response to Inquiry document 16
- 23 Council's letter withdrawing reason for refusal (h)-appeal A and (G)-appeal B insofar as they relate to the capacity of the junction of old Newgate Lane/Newgate Lane East
- 24 Fareham Society-proof of evidence summary
- 25 Ms Hoskins-Linsig model results, junction layouts note and extract from the Highway Code
- 26 Highway Authority-Note dated 18 February 2021 regarding highway capacity point raised by Gosport Borough Council
- 27 Councillor Philpott-supplementary notes
- 28 Councillor Hayre-proof of evidence
- 29a Mrs White-proof of evidence summary
- 29b Mrs Roast-proof of evidence summary
- 30 Updated Report to inform HRA Stage 1 and Stage 2
- 31 Plan-Gosport Road Fareham Air Quality Management Area 2017 (A)
- 32 Gosport Borough Council Ward Maps-Peel Common and Bridgemary North

- 33 Pegasus-1) Traffic Flows at the old Newgate Lane and Newgate Lane East Junction and 2) 21 and 21A Bus Service
- 34 Birds Unilateral Undertaking-update
- 35 Appeal A-Main Unilateral Undertaking
- 36 Highway Authority-Note in response to new information provided by the appellants under cross examination of Ms Hoskins, Ms Parker-note on settlement terminology and Mr Gammer-updated proofs of evidence.
- 37 Councillor Philpott-email dated 19 February 2021, air quality clarification
- 38 Tetra Tech-Note on Winter Bird Mitigation Area Nitrogen Budget, 23 February 2021
- 39 Council-email dated 23 February 2021, consultation responses
- 40 Council/appellants-Consolidated Conditions Schedule
- 41 Council-Boundary plans related to Brookers Lane
- 42 Pegasus-Newgate Lane East Capacity note
- 43 Ms Parker-Status and weight of Local Plan Evidence Based Landscape Documents
- 44 Mr Sibbett-Note on qualifying features
- 45 Fareham Society-closing statement
- 46 Highway Authority-Note addressing queries relating to the southern site Unilateral Undertaking
- 47 Planning Inspectorate-contaminated land model conditions
- 48 Councillor Heneghan-consultation response, dated 29 October 2018
- 49 Lee Residents Association-Closing statement
- 50a Council/appellants-additional conditions
- 50b Pegasus-scale and density note
- 51 Councillor Heneghan-proof of evidence
- 52a The Civil Engineering Practice-Technical Note on Flood Risk and Discharge Restriction
- 52b Appeal A-Main Unilateral Undertaking-tracked changes
- 53 Pegasus note-Ownership and status of the Brookers Lane shared footway/cycleway between Newgate Lane East and Bridgemary
- 54 Ms Parker-Further advice on the consultation responses to the Fareham Landscape Assessment (FLA)(2017)(CDG15)
- 55 Tetra Tech-Report to inform Habitats Regulations Assessment Stage 1 and stage 2-updated
- 56 Acon Uk-Air Quality note
- 57 Birds Unilateral Undertaking-update (tracked changes)
- 58 Council-closing statement
- 59 Council-email confirmation, dated 25 February 2021, of the red line site boundary drawing numbers for the applications
- 60 Birds Unilateral Undertaking-update
- 61 Appellants-closing statement
- 62 Formally completed unilateral undertakings

**Land South of Romsey Avenue, Portchester**

**PINS Ref: APP/A1720/W/21/3271412 (LPA Ref: 18/1073/FP)**

**Statement of Common Ground: Five Year Housing Land Supply**

*8<sup>th</sup> July 2021*

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**1. Introduction**

- 1.1. This Housing Land Supply (“HLS”) Statement of Common Ground (“SoCG”) has been prepared by Mr Steven Brown (of Wolf Bond Planning), on behalf of the Appellant, Foreman Homes Ltd and Richard Wright on behalf of Fareham Borough Council. It sets out both the agreed and disputed matters having regard to the five year housing land supply position.
- 1.2. This HLS SoCG identifies the requirement to be met during the five year period, the deliverability of the identified components of supply; and the subsequent five year housing land supply positions of the respective parties.

**2. The Agreed Position**

- 2.1. It is common ground that the Council is not able to demonstrate a five year supply of deliverable housing land against the minimum five year requirement for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 2.2. As such, it is common ground that the Council is not meeting paragraph 59 of the NPPF and, by virtue of footnote 7, paragraph 11(d) is engaged unless disapplied by virtue of paragraph 177.
- 2.3. The shortfall will only be rectified if planning approval is given for housing on sites not originally envisaged for housing in the adopted Local Plan Parts 1 and 2 or through plan-led development delivered through the emerging Local Plan.
- 2.4. In the circumstances, the most important, operative policy for determining the acceptability of residential development on the Site is Policy DSP40.

**3. The Housing Requirement and Five Year Period**

- 3.1. It is agreed between the parties that the five year period to be used for the purpose of calculating the five year housing land supply position for this appeal is 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.
- 3.2. In so far as the strategic policies from the Core Strategy and Development Sites and Policies DPD are more than five years old, it is agreed, by operation of paragraph 73 and footnote 37 of the NPPF, that **the housing requirement falls to be measured against the local housing need figure calculated using the standard method.**

- 3.3. A such, the starting point to calculating the five year requirement is the minimum **539 dwelling annual requirement** derived from the application of the Standard Method. This equates to 2,695 dwellings requirement.
- 3.4. However, and as a result of the Housing Delivery Test (“HDT”) results published in February 2021, it is agreed that it is appropriate to apply a 20% buffer to the requirement.
- 3.5. This results in a minimum five year requirement of **3,234 dwellings for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.**

**4. Housing Supply**

- 4.1. The Council maintains it has a five year supply of 2,310 dwellings. This results in a shortfall of 924 dwellings and a supply of 3.57 years.
- 4.2. The Appellant identifies a supply of 600 dwellings. This results in a shortfall of 2,634 dwellings and a supply of only 0.93 years.
- 4.3. The respective positions are summarised in Table 1 below.

*Table 1: Respective Five Year Housing Supply Positions*

	<b>Fareham Borough Council</b>	<b>Appellant</b>
Minimum 5yr Req. 1 Jan 2021 to 31 Dec 2025	3,234	3,234
Deliverable Supply	2,310	600
Extent of Shortfall	-924	-2,634
No. Years Supply	3.57yrs	0.93yrs

- 4.4. The supply differences are set out in **Appendix 1** attached
- 4.5. As set out above, and on either approach, it is agreed that the Council is unable to demonstrate a five year supply of deliverable housing land.

**5. Implications of the Respective Five Year Positions**

- 5.1. The agreed position between the Council and Appellant is that the Council is not able currently to demonstrate a five year supply of deliverable housing land for the period 1st January 2021 to 31st December 2025.
- 5.2. As such, it is common ground between the Council and Appellant that the Council is not meeting paragraph 59 of the NPPF, thus engaging the presumption in favour of sustainable development at paragraph 11(d) of the NPPF unless disapplied by virtue of paragraph 177.
- 5.3. Whilst the Council and Appellant disagree as to the extent of the shortfall, it is nevertheless agreed, on either position, that the shortfall is significant and the weight to be attached to the delivery of housing from the Appeal Scheme is significant. As such it is not considered necessary for the Inspector to conclude on the precise extent of the shortfall.

- 5.4. In the light of the agreement reached between the parties in relation to the significance of the five year housing land supply shortfall, neither party will call their respective witnesses to deal with housing land supply matters unless such evidence is requested by the Inspector. This will save time and resources and will enable a more efficient inquiry process.
- 5.5. This HLS SoCG is signed and dated below.

### **Signatures**

On behalf of the Appellant:



P MRTPI (Woolf Bond Planning obo Foreman

Name: Richard Wright MRTPI Fareham Borough Council

Date: 8<sup>th</sup> July 2021

\*\*\*\*\*

## Appendix 1: Site Delivery

The following table sets out the respective positions in relation to the deliverability of the components of supply.

Supply source	Revised Council <sup>1</sup>	WBP	Difference
Outstanding Planning Permissions – Small (104 dwellings) (10% discount)	69	69	0
Outstanding Full Planning Permissions – Large (5+ dwellings)	402	402	0
Outstanding Outline Planning Permissions – Large (5+ dwellings)	296	27 <sup>2</sup>	269
Resolution to Grant Planning Permission – Large (5+ dwellings) (exc Welborne)	742 <sup>3</sup>	0	742
Resolution to Grant Planning Permission – Large (5+ dwellings) (Welborne)	390	0	390
Brownfield Register Sites	276	0	276
Local Plan Adopted Housing Allocations	33	0	33
Windfall	102	102	0
<b>Total</b>	<b>2,310</b>	<b>600</b>	<b>1,710</b>

<sup>1</sup> Supplementary Statement to Newgate Lane East Appeal (3269030)

<sup>2</sup> Sites included in this category by WBP are: Egmont Nurseries, Brook Avenue (8 dwellings); 18 Titchfield Park Road, Titchfield (6 dwellings); east & west of 79 Greenaway Lane (6 Dwellings) and Burridge Lodge (7 dwellings)

<sup>3</sup> Paragraph 5.8 of the Council's Supplementary Statement for Newgate Lane East Appeal indicates that this figure should be 663.

[REDACTED]

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**Environmental Health MEMO**

**Planning Application Consultation Response**

[REDACTED]

Ref: P/19/0894/OA

Date: 20 September 2019

*Noise*

I have reviewed the noise impact assessment (reference AC105901-1R1) produced by Resource and Environmental Consultants Ltd (REC) which concludes that the site is suitable for residential development.

Whilst future occupiers will be able to open windows to provide purge ventilation, for the vast majority of facades acceptable internal noise levels rely on windows to be closed at all times to mitigate noise from the M27 motorway. Achieving acceptable noise in external amenity space relies on erecting x3 2.6m high acoustic fences and even with these fences and buildings acting as noise barriers noise levels in a significant proportion of gardens will be above the 55dB acceptable limit. Development Control should make a decision as to whether this is an attractive residential development given that there are more suitable sites available for residential development.

If development is permitted then conditions should be attached to planning consent to control noise. These include:

A condition should be applied to planning consent requiring that all noise mitigation measures detailed in the noise impact assessment (reference AC105901-1R1) should be fully incorporated into the design of the development. Which include:

- Higher fencing to a height of 2.6m should be installed as shown on Figure 10 in order to achieve the best practicable noise levels and in most cases to meet the required criterion;
- Alternative ventilation should be fitted to specified habitable rooms as an alternative to opening windows; and

- Glazing with a range of higher specifications up to  $Rw+Ctr=40$  should be fitted to specified facades as shown in the Figures.

In addition to the above, I strongly advise that whole dwelling ventilation systems are installed throughout the development and the developer does not just rely on acoustic trickle vents to provide adequate ventilation. The developer should provide a specification for whole dwelling mechanical ventilation to be approved by the Local Planning Authority.

*Noise impact assessment refers to further improving noise levels to outdoor amenity space*

Regarding exceedances to outdoor amenity space the assessment states "Of those gardens where the criterion is not met, in a number of cases it is possible to lower levels below the criterion through further mitigation, and in all cases to achieve the best practicable levels". Environmental Health recommend that acceptable noise levels in outdoor amenity space should be achieved across the site. Therefore the developer should detail of how to achieve the above and the additional mitigation should be incorporated into the development.

#### *Noise monitoring locations*

The noise measurement site locations are some distance from the development site. On Figure 2 below I have crudely marked the development site in relation to the noise measurement positions in the acoustic assessment. I suspect this is because the noise data has been used to support numerous planning applications.

The acoustic consultant should provide a justification as to why noise measurements have not been taken at the development site and explain why in their professional opinion the chosen measurement locations are fully representative of the noise levels at the site.

**FIGURE 2 – Noise Measurement Positions**



*Air Quality*

I have reviewed the air quality assessment dated reference AQ105928R2 produced by REC. The report is informative and well-constructed report although the report refers to the development site being located within an air quality management area, which it is not.

I recommend that during the construction phase all mitigation measures to control dust listed in Table 18 Fugitive Dust Mitigation Measures should be fully implemented.

Despite the report's conclusions that the impacts of the development are anticipated to be not significant there is no safe exposure level to poor air quality.

Therefore I suggest that the development should be designed to include the principles of good design included in Section 5.10 of the Land-Use Planning and Development Control: Planning for Air Quality (EPUK and IAQM, 2017) specifically:

- Provision should be made of at least 1 Electric Vehicle (EV) "rapid charge" point per 10 residential dwellings and/or 1000m<sup>2</sup> of commercial floor space. Where on-site parking is provided for residential dwellings, EV charging points for each parking space should be made.
- All gas-fired boilers to meet a minimum standard of <40 mgNO<sub>x</sub>/kWh."

Regards

Craig Perkins  
Senior Environmental Health Officer



*For Fareham only please leave the line below as its used by the back office for processing:*  
*From: [planningECH@fareham.gov.uk](mailto:planningECH@fareham.gov.uk) [<mailto:planningECH@fareham.gov.uk>]*

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:	Mr
First Name:	Steve
Last Name:	Carrington
Job Title: (where relevant)	
Organisation: (where relevant)	Foreman Homes Ltd
	c/o Agent
Address:	
Postcode:	
Telephone Number:	
Email Address:	

A3 Please provide the Agent's details:

Title:	Mr
First Name:	Steven
Last Name:	Brown
Job Title: (where relevant)	
Organisation: (where relevant)	Woolf Bond Planning
Address:	
Postcode:	
Telephone Number:	
Email Address:	

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                  Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
H1 and HP4**

**and**

**Omission of Land at North Wallington and  
Standard Way, Wallington as an Allocation  
in Policy H1 (SHELAA Site Ref 324).**

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**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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## **APPENDICES**

1. Inspector's Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021)
2. Inspector's Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020)
3. Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054
4. Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031)
5. Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344);
6. Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431)
7. Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119)
8. Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015)
9. Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185)
10. Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021)

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in land located North Wallington and Standard Way. The Site has been assessed in the SHELAA as Site Ref: 324. It was also proposed as a housing allocation for 21 dwellings under Policy HA20 of the 2017 consultation draft Local Plan.
- 1.2. As such, the Site has been promoted through earlier stages of the Local Plan process as sustainable urban extension to Fareham, an acknowledged suitable location for growth within the Borough as indicated in the SHELAA.
- 1.3. As indicated in these representations, we contend that insufficient deliverable and/or developable land has been identified to address the Borough's housing needs for a plan period consistent with the requirements of the NPPF, including an appropriate contribution towards addressing the significant unmet housing needs of the City of Portsmouth – a neighbouring authority. We therefore advocate changes to the Local Plan to address this, including the allocation of our client's land at North Wallington and Standard Way, Wallington.
- 1.4. The reports and documents submitted with this representation demonstrate the suitability of the approach advocated. As detailed in the representations, this land is not subject to constraints which would prevent its delivery for development at an early stage during the emerging plan period should this be confirmed through the examination of the Plan.
- 1.5. We also have several comments/representations on the policies within the Revised Draft Submission Fareham Borough Local Plan which should be addressed prior to its submission for examination by the Secretary of State.

## **2. REPRESENTATIONS AND SUPPORTING INFORMATION**

2.1. Our comments upon the various draft policies and proposals are set out below and are accompanied by the following Documents:

- Duly Completed Response Form.
- Inspector’s Report into Examination of the Tonbridge & Malling Local Plan (7<sup>th</sup> June 2021) (**Appendix 1**)
- Inspector’s Report into Examination of the Sevenoaks Local Plan (2<sup>nd</sup> March 2020) (**Appendix 2**)
- Sevenoaks DC v Secretary of State for Communities, Housing & Local Government [2020] EWHC 3054 (**Appendix 3**)
- Land adjacent to ‘The Navigator’, off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**);
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)
- Land east of Dowend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)

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- Environmental Health Comments for application P/19/0894/OA (**Appendix 11**)

2.2. Our client's representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy H1 – Housing Provision	Objection
Policy HP4 – Five-year Housing Land Supply	Objection
Omission site – Land at North Wallington and Standard Way (SHELAA Ref 324) – failure to include as an allocation in Policy H1	Objection

### **3. OVERARCHING POSITION**

- 3.1. We have a strong belief in the principle of the plan-led system and in setting out our representations upon these polices, we hope to be able to work with the Council between now and the formal submission of the Revised Draft Local Plan pursuant to Regulation 22 of The Town and County Planning (Local Planning) (England) Regulations 2012 (as amended), to ensure the Local Plan satisfies the tests of soundness at paragraph 35 of the NPPF.
  
- 3.1. We have considerable experience and expertise in dealing with and realising development schemes through the planning system. In this context, a principal constraint to the timely delivery of housing is the way in which policies for the allocation of sites have been formulated.
  
- 3.2. Local Plans must be capable of delivering from the point at which they are adopted. This means scrutinising the policy wording to ensure the Plans are sound and that the allocations contained therein are capable of being delivered at the point envisaged. This is particularly the case in relation to the need for Councils to collate a robust evidence base to justify the imposition of certain policies and/or their wording so as not to over burden and/or stifle sustainable and appropriate development.
  
- 3.3. In this instance, the draft Local Plan needs to be amended in order to ensure it robustly plans for the delivery of sufficient housing to address a housing requirement established in accordance with national planning policy and guidance. This indicates that the Plan must seek to deliver the minimum of 10,738 dwellings between 2021 and 2039 rather than at least 9,560 dwellings from 2021 to 2037 as currently envisaged.
  
- 3.4. To address this requirement for additional homes, we contend that further land should be allocated including the land controlled by our clients at North Wallington and Standard Way, Wallington (SHELAA site ref 324). This site can accommodate approximately 21 dwellings (including a policy-compliant level of affordable housing) in a sustainable location.

- 3.5. The representations also highlight a failure of the Plan as currently drafted to contribute sufficiently towards addressing the acknowledged unmet needs of neighbouring authorities and the allocation of land at North Wallington and Standard Way, Wallington can also supply homes to contribute towards resolving this issue.
- 3.6. We also advocate other revisions to the Draft Submission Local Plan to ensure it is consistent with the evidence base prepared by the authority.
- 3.7. We are concerned to ensure that the Local Plan is robust, and it is in this context that we set out our representations.

## **4. THE NPPF TESTS OF SOUNDNESS**

- 4.1. Section 3 of the NPPF (July 2021) sets out the principal components to be included in Local Plans.
- 4.2. Paragraph 35 requires that to be “sound” a DPD should be positively prepared, justified, effective and consistent with national policy.
- 4.3. A positively prepared plan provides a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs, and is informed by agreements with other Authorities so that unmet need from neighbouring areas is accommodated where practical to do so and is consistent with achieving sustainable development.
- 4.4. In order to be justified, the Revised Draft Submission Local Plan must have an appropriate strategy, taking into account reasonable alternatives and be based on proportionate evidence.
- 4.5. Effective means the document must be deliverable over the plan period and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred and evidenced by the statements of common ground.
- 4.6. The Local Plan should seek to meet the Council’s full housing need. However, we have concerns regarding the rationale for and robustness of the housing numbers the Council is seeking to accommodate within the Revised Draft Submission Local Plan. We also have concerns regarding the appropriateness certain of the proposed allocations and their ability to contribute towards meeting the Borough’s identified housing need.
- 4.7. For the reasons set out in these representations there are several shortcomings with the Plan, as currently drafted, that result in the need for amendments.
- 4.8. These amendments relate to the need to increase the level of housing provision within a more appropriate plan period, thereby ensuring the emerging plan is consistent with the Government’s planning advice and policy.

## **5. POLICY H1: HOUSING PROVISION**

### **Representations**

#### **The Housing Requirement and Plan Period - Robustness of Supply**

- 5.1. Policy H1 indicates that the Local Plan must accommodate land for at least 9,560 dwellings over the period 2021-2037.
- 5.2. Table 4.1 of the Revised Draft Local Plan details the derivation of this housing requirement through determining the area's minimum Local Housing Need consistent with the NPPF.
- 5.3. Although we acknowledge that the minimum local housing need when calculated using the approach detailed in the Guidance, we dispute the reasonableness of the expected Plan period and its consistency with the obligation to provide strategic policy for at least 15 years post adoption<sup>1</sup>.

#### **Housing Needs of Neighbouring Authorities**

- 5.4. Paragraph 60 is clear that in determining an areas' housing need, account should be taken of any requirements which cannot be addressed by neighbouring authorities.
- 5.5. The Council's Duty to Co-operate (DtC) Statement summarises the discussions and engagement that the authority has had with other bodies pursuant to the Duty to Co-operate.
- 5.6. The DtC Statement is clear that the City of Portsmouth has identified clear challenges for the authority to meet its housing needs.
- 5.7. Whilst the Revised Draft Plan includes a contribution of 900 dwellings<sup>2</sup> towards unmet needs of neighbouring authorities, the DtC is clear that the City of

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<sup>1</sup> NPPF, paragraph 22

<sup>2</sup> Table 4.1

Portsmouth seeks a contribution of 1,000 dwellings<sup>3</sup>. Although Fareham contends that the request from Portsmouth is “out-of-date”<sup>4</sup>, there is no evidence to substantiate this position.

- 5.8. In addition, FBC has not indicated which other neighbouring authority to the City of Portsmouth would also be contributing towards addressing its unmet needs.
- 5.9. The Inspectors Reports into the Examination of both the Sevenoaks and Tonbridge & Malling Local Plans (**Appendices 1 and 2**) are clear that a document will have failed in the legal test associated with the Duty to Co-operate where it has failed to make an effective contribution towards unmet needs of neighbouring authorities.
- 5.10. The letter of 25<sup>th</sup> February 2020 provided within the Council’s DtC Statement from the City of Portsmouth (**Appendix 9**) indicates that the Council expects to have a shortfall of just over 3,000 dwellings. It consequently sought to have a contribution of 1,000 dwellings within Fareham Borough which would go some way to resolving the identified shortfall.
- 5.11. As Fareham Borough has been aware of the extent of unmet need within the City for nearly 18 months, it would have been appropriate to increase the housing requirement to make an effective contribution. Whilst Fareham contends that the City’s request is out of date (paragraph 4.6 refers), this is not evidenced. Therefore, it is appropriate for Fareham to include a larger contribution (of at least 1,000 dwellings) towards the unmet needs of the City.
- 5.12. Having regard to the clear longstanding indications that Portsmouth City could not meet its housing needs, the approach of Fareham Borough as indicated in their DtC Statement (paragraph 4.6), it is not considered reasonable. Instead, rather than just an allowance of 900 dwellings, this should be increased to at least 1,000 dwellings consistent with the request of the City of Portsmouth (recognising that this is only a third of their expected unmet need). Ideally

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<sup>3</sup> Paragraph 4.5 and Appendix 9

<sup>4</sup> Paragraph 4.6 of DtC Statement

Fareham Borough should make a significantly larger contribution towards the City's unmet housing needs.

### **Robustness of Plan Period**

- 5.13. Although the Council's latest Local Development Scheme (June 2021) indicates that consultation on the Revised Draft Submission Plan is to occur in Spring/Summer 2021 followed by submission in the autumn and adoption in autumn/winter 2022, this is not considered realistic.
- 5.14. A review of the time taken for the examination of Strategic Local Plans consulted upon and submitted for examination since the original NPPF was published in March 2012<sup>5</sup> indicates that on average the period from submission through to the document's adoption was 581 days (i.e. 1 year 7 months) (for the more than 200 Strategic documents found sound until 1<sup>st</sup> June 2021).
- 5.15. The average period from consultation on a draft Submission Plan until its adoption was 764 days (i.e. 2 years 1 month).
- 5.16. Alternatively, when considering the 11 Strategic Local Plans submitted for examination since the end of the transition period in paragraph 214 of the 2019 NPPF<sup>6</sup>, these have taken 619 days (1 year 8½ months) from consultation through to adoption or 488 days from submission to adoption (1 year 4 months). As this is a very small sample size, it is clear that a longer timeframe for the document's examination would be more realistic.
- 5.17. As consultation on the Revised Draft Submission Plan commenced in June 2021, allowing at least 2 years until adoption indicates that this would not occur until June 2023. With submission expected in autumn 2021, the larger sample size indicates that adoption would not occur until early 2023.
- 5.18. To ensure consistency of the Plan with the requirements of NPPF paragraph 22, the Strategic policies (including H1) should therefore look ahead a minimum

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<sup>5</sup> Data on progress of Strategic Local Plans until 1<sup>st</sup> June 2021 from <https://www.gov.uk/government/publications/local-plan-monitoring-progress/plans-containing-strategic-policies>.

<sup>6</sup> Submitted on or before 24<sup>th</sup> January 2019. This is repeated in paragraph 220 of the NPPF (2021).

15 years from adoption of the Local Plan, that will be to at least March 2039, an additional 2 years longer than the currently envisaged timeframe.

- 5.19. If the Borough's housing requirement was increased by the Local Housing Need figure of 541dpa, this would result in the need for a further 1,078 dwellings in the Plan.
- 5.20. However, as we contend that the allowance for unmet housing needs in the City of Portsmouth should be at least 1,000 dwellings. Accordingly, the total minimum housing requirement for the period 2021-2039 would be 10,738 dwellings<sup>7</sup>. This is an increase of 1,178 compared to the 9,560 dwelling requirement current specified in draft policy H1.
- 5.21. Whilst the Draft Plan indicates that it can deliver 10,594 dwellings (Table 2), this is insufficient to address the increased requirement of 10,738 dwellings we advocate. In addition, the Council's delivery assumption from certain of the identified components of supply will not be delivered at the point envisaged.
- 5.22. For the reasons detailed above, a March 2039 end date would provide for 15 years after the 2023/24 monitoring period during which adoption could be realistic anticipated.

### **Approach to Phasing the Housing Requirement**

- 5.23. We do not consider the Council has adequately justified the phased housing requirement asset out in the Plan.
- 5.24. Whilst the Council indicates that a significant proportion of the Borough's housing delivery is to arise at Welborne Garden Village (paragraph 4.16 refers), the Council's expectations for development of this strategic allocation have consistently been demonstrated to be over optimistic.

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<sup>7</sup> (541 x 18) + 1,000

5.25. The Council's continuously revised trajectories for Welborne are summarised in the following table which emphasises the continual delays in commencement of development on the site.

Document	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	Total
<b>CS: Local Plan Part 1 (Adopted Aug 2011)</b>	50	200	300	400	550	550	550	550	550	550	550	550	5,350
<b>Local Plan Part 3, Table 10.1 (Adopted June 2015)</b>	0	0	120	180	200	320	340	340	340	340	340	340	2,860
<b>Nov 2016 AMR with respect of Apr 2016</b>	0	0	0	0	0	250	350	-	-	-	-	-	600
<b>Welborne Background Paper Oct 2017</b>	0	0	0	0	0	0	140	200	250	250	250	250	1,340
<b>Dec 2017 Position (completions to 31<sup>st</sup> Mar 17 and commitments to 31<sup>st</sup> Oct 17)</b>	0	0	0	0	0	0	140	200	-	-	-	-	340
<b>Sep 2018 Position</b>	0	0	0	0	0	0	140	200	250	-	-	-	590
<b>Apr 2019 position</b>							30	180	240	240	-	-	690
<b>Apr 2020 position</b>									30	180	240	-	450
<b>Jan 2021 position<sup>8</sup></b>									30	180	240	180	630
<b>Apr 2021 position<sup>9</sup></b>										30	180	240	450

5.26. Given the absence of a planning permission for any part of the site, all of the previous trajectories have failed to materialise and have been shown to represent over optimistic assumptions.

<sup>8</sup> Forecasts relates to calendar not monitoring years (Apr- Mar). Therefore 30 dwellings are envisaged for completion during 2022 which is 3 months earlier than that detailed in the table associated with paragraph 8.10.7 of the January 2021 Planning Committee Report.

<sup>9</sup> Updated forecasts for monitoring not calendar year from HDT Action Plan (June 2021)

- 5.27. Whilst the Council has resolved to grant permission, this has yet to be issued and therefore the expectation that homes can be delivered on the site in 2023/24 still remains unrealistic and overly optimistic.
- 5.28. Consequently, the Council's justification for a stepped housing requirement on the expectation that Welborne will deliver in order to demonstrate a five year supply is not supported by evidence. Instead, the authority should allocate further sites to boost supply and contribute towards unmet housing needs in the City of Portsmouth at the earliest opportunity. To achieve this, the housing requirement should be set at the same consistent rate for the entire plan period (2021-2039). To achieve the minimum of 10,738 dwellings we advocate, the minimum annual requirement should be 596dpa (rounded)

### **Robustness of Housing Land Supply**

- 5.29. Although the Council has provided a housing trajectory detailing the expected delivery each year, it has not provided a breakdown by the various sources relied upon by the authority as indicated in Table 4.2.
- 5.30. Furthermore, given the importance of Welborne to the Borough's supply, it is important that this is identified separately to the other sources.
- 5.31. In the absence of detailed annual breakdown of expected supply by source, it is not considered that the Council has adequately demonstrated its approach is robust. This is especially noticeable given the evolving trajectory for Welborne has resulted in delays to its delivery from that originally envisaged in the Core Strategy to that now expected.
- 5.32. With the uncertainty over the delivery of the various sources, it is not known whether the authority can achieve its forecasts and consequently it is essential that further flexibility is included in the plan to allow delivery of additional homes.

## **Conclusions**

- 5.33. The housing requirement and delivery as set out in Policy H1 cannot be said to be sound as it fails to provide for at least 15 years post adoption together with a failure to plan for a requirement which reflects the Government's objectives of significantly boosting the supply of housing. Additionally, an increased contribution should be required as a measure of seeking to address the acknowledged deficit within the City of Portsmouth. Fareham Borough's contribution should be at least 1,000 dwellings.

### **Changes sought to the Development Requirements in Policy H1.**

- 5.34. The Plan therefore as currently prepared does not comply with the Duty to Co-operate through a failure to effectively consider how unmet housing needs of neighbouring authorities, especially the minimum of 1,000 dwellings sought by the City of Portsmouth is to be addressed.
- 5.35. The Council has not actively engaged with the City and like the approaches of Sevenoaks and like Tonbridge & Malling (whose plans were found to fail the Duty) it is clear that the approach of Fareham Borough is insufficient to accord with their legal obligation. As such, there is a case to be made that the plan should be withdrawn, and the Council tasked with demonstrating compliance with the duty.
- 5.36. Irrespective of the failure to comply with the Duty to Co-operate, Policy H1 cannot be said to satisfy the tests of soundness on account of the following:
- a) It is not positively prepared as it does not seek to address the borough's housing needs for at least 15 years post adoption (on a realistic plan preparation timeframe), therefore further sites should be allocated;
  - b) It is not positively prepared as it fails to boost the supply of housing by seeking to address the borough's housing need, alongside those of neighbouring authorities at the earliest opportunity. This is through the unjustified inclusion of a stepped requirement;

- c) It is not justified with regard to the timeframe that the examination of the Local Plan will take resulting in a delayed adoption of the document;
- d) It is also inconsistent with national policy in the failure to both boost housing supply and make an appropriate contribution towards addressing the housing needs of neighbouring authorities as required by paragraph 60 of the NPPF.

5.37. To address these matters of soundness, several amendments are proposed. The proposed changes are.

1. That policy H1 is amended to:
  - A) ensure that the plan period is 2021 to 2039;
  - B) That the housing requirement is increased to 10,738 dwellings;
  - C) That the stepped housing requirement is omitted and replaced with a single level need;
  - D) That additional sites are included in the Plan to address this higher need (including our clients land at North Wallington and Standard Way, Wallington) and
  - E) That further detail of the annual delivery by specific site within each source is included in the Plan.
2. That consequential amendments are made to the document to reflect these revisions.

## **6. POLICY HP4: FIVE-YEAR HOUSING LAND SUPPLY**

### **General**

6.1. Policy HP4 explains how the Council will continue to the approach of Policy DSP40 of the existing Local Plan. This is through consideration of additional housing schemes to boost the supply of housing.

6.2. As indicated in our separate response to Policy H1, the Council has consistently been overly optimistic in the expectations of delivery from Welborne. It is therefore essential that a policy which can contribute towards boosting the supply of housing is included in the Plan. However, the Council has a poor track record of maintaining five year supply (as confirmed in appeal decisions including):

- Land adjacent to 'The Navigator', off Swanwick Lane, Lower Swanwick – allowed on 20<sup>th</sup> January 2015 (Ref APP/A1720/A/14/2220031) (**Appendix 4**)<sup>10</sup>
- Land north of Cranleigh Road and west of Wicor Primary School, Portchester – allowed on 14<sup>th</sup> August 2017 (Ref APP/A1720/W/16/3156344) (**Appendix 5**)<sup>11</sup>;
- Sawmills Industrial Park, Wickham Road, Fareham – dismissed on 10<sup>th</sup> September 2018 (Ref APP/A1720/W/17/3192431) (**Appendix 6**)<sup>12</sup>
- Land east of Posbrook Lane, Titchfield – dismissed on 12<sup>th</sup> April 2019 (Ref APP/A1720/W/18/3199119) (**Appendix 7**)<sup>13</sup>
- Land east of Downend Road, Portchester - dismissed on 5<sup>th</sup> November 2019 (Ref APP/A1720/W/3230015) (**Appendix 8**)<sup>14</sup>
- Land at Newgate Lane (North & South), Fareham – dismissed on 8<sup>th</sup> June 2021 (APP/A1720/W/20/3252180 & 3252185) (**Appendix 9**)<sup>15</sup>
- Housing Land Supply SoCG for the Romsey Avenue Appeal (8 July 2021) (**Appendix 10**)

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<sup>10</sup> Paragraph 62

<sup>11</sup> Paragraph 27

<sup>12</sup> Paragraph 55

<sup>13</sup> Paragraphs 17, 51 & 52

<sup>14</sup> Paragraph 90

<sup>15</sup> Paragraph 91

- 6.3. Having regard to the Council's track record of not being able to demonstrate a five year supply, especially having regard to overly optimistic expectations of delivery from various sources (especially Welborne) it is essential that the policy does not arbitrarily restrict growth.
- 6.4. In this context, it is not considered that meeting the Government's objectives of boosting the supply of housing should be constrained by the need to consider landscape character and the intrinsic beauty of the countryside when the NPPF is clear that all the factors need to be considered collectively. Therefore, clause (c) of the policy should be omitted.

#### **Current Five Year Housing Land Supply Position**

- 6.5. As set out above, previous appeal decisions have consistently found the Council's published five year housing land supply position to be overly optimistic. That remains the case for the figures currently relied upon by the Council.
- 6.6. A recent assessment of the Council's five year housing land supply position is contained in an appeal decision relating to land east of Downend Road, Portchester (PINS Ref: APP/A1720/W/19/3230015) (5 Nov 2019), with paragraph 90 of that decision stating as follows:

**“The 5yrHLS evidence put before me shows that there are a significant number of dwellings subject to applications with resolutions to grant planning permission that are subject to unresolved matters, including the execution of agreements or unilateral undertakings under Section 106 of the Act. In many instances those resolutions to grant planning permission are 18 or more months old and I consider they cannot be considered as coming within the scope of the Framework's deliverability definition. I therefore consider that the Council's claimed 4.66 years HLS position is too optimistic and that the appellant's figure of 2.4 years better represents the current situation.”**

- 6.7. The deficit in the Council's five year housing land supply position has continued to persist.

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- 6.8. The Council's housing land supply position was set out in their Report to Planning Committee dated 17 February 2021 which purports to be able to show a 4.18 year supply of deliverable housing land for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025. This results in a shortfall of 498 dwellings, on which basis the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 6.9. These figures were considered at the recent Newgate Lane (North and South Appeal), which findings are summarised below:
- a) *The Council and the appellants agree that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites (para 15 refers)*
  - b) *The Council and the appellants agree that the housing requirement set out in the Development Plan has not been reviewed within the last 5 years and found not to need updating, and so the five-year supply position should be calculated against the minimum local housing need identified by the Standard Method. This produces a local housing need figure of some 514 homes per annum (para 87 refers)*
  - c) *Having regard to the Housing Delivery Test results published in January 2021, it is now necessary to apply a 20% buffer. This leads to an annual requirement of around 617 units per annum and 3,084 dwellings over the five-year period (para 87 refers)*
  - d) *The Council and the appellants differ regarding the precise extent of the shortfall; the Council suggesting a 3.4-year land supply and the appellants a 0.97-year land supply (para 87 refers)*
  - e) *Based on the evidence before me, I consider that the Council's expectations of delivery are likely to be unrealistic and the actual housing land supply position is likely to be closer to the appellants' estimate than the Council's. The Council acknowledges that other recent appeal decisions have found the deliverable supply it has identified to be too optimistic (para 91 refers)*
  - f) *The Council considers that the shortfall in supply would be short lived upon the adoption of the LPe. However, it appears that the LPe is at a relatively early stage towards adoption. Furthermore, at the Inquiry, the Council confirmed that no firm date has been set for adoption and it estimated that it would be unlikely to be before the autumn of 2022. Therefore, I consider it likely that a shortfall in housing land supply will persist for some significant time to come (para 92 refers)*

- 6.10. The Inspector’s conclusions are nothing new and reflect the position that has endured in FBC for a considerable period of time.
- 6.11. The Council has already reflected upon the findings of the Newgate Lane Inspector, with the Council now advocating a deliverable housing supply of 3.57 years, which represents a shortfall of 924 dwellings. This represents a substantial shortfall, and which position is reflected in the Housing Land Supply SoCG prepared for a current appeal in relation to our client’s omission site at Romsey Avenue, Fareham (8 July 2021) (**Appendix 10**):
- 6.12. However, and on our analysis, the actual shortfall is much greater. We are of the view that there is **less than a 1 year supply of deliverable housing land as at the current base-date (1<sup>st</sup> Jan 2021 to 31<sup>st</sup> Dec 2025)**.
- 6.13. We have undertaken a review of the five year housing land supply position, and our conclusion as set out in **Appendix 10** is that the shortfall is much greater than purported to be the case by the Council.
- 6.14. The below Table provides a comparison between the housing land supply position set out in the Council’s Published Report to Committee in February 2021, the Council’s updated position (same base-date) as set out in the Housing Land Supply SoCG (**Appendix 10**) and that which we have derived for the five year period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2025.

*The Respective Five Year Housing Land Supply Positions*

	<b>Council Feb 2021</b>	<b>Council June 2021</b>	<b>My Position obo Appellant</b>
Requirement 2021 to 2025	3,048	3,234	3,234
Assessed deliverable supply	2,550	2,310	600
Extent of shortfall/surplus	<b>-498</b>	<b>-924</b>	<b>-2,634</b>
No. of years supply	<b>4.18yrs</b>	<b>3.57yrs</b>	<b>0.93yrs</b>

- 6.15. We identify a total deficit of 2,634 dwellings which represents a supply of only 0.93 years.
- 6.16. The shortfall we have identified is much greater than the 3.57 year supply figure relied upon by the Council.

## **Suggested Changes to Policy HP4**

- 6.17. Policy HP4 cannot be said to be sound in respect of the following:
- a) Not positively prepared as the policy (alongside others in the document) will fail to provide an effective solution towards maintaining a five years supply of housing,
  - b) The policy is not consistent with national policy as it fails to provide an effective solution which will ensure the maintenance of a five year supply of housing.
- 6.18. To address these matters of soundness, the following amendments is proposed:
- 1. That clause c is omitted from policy HP4.

## **7. OMISSION SITE: FAILURE TO IDENTIFY LAND AT NORTH WALLINGTON AND STANDARD WAY AS A HOUSING ALLOCATION FOR APPROXIMATELY 21 DWELLINGS**

### **General**

- 7.1. Through the other representations submitted to the policies of the Plan, there is a need to allocate additional land for housing development. Having regard to the representations and the earlier promotion of the omission site for residential development, the evidence justifies the allocation of the site for circa 21 dwellings.
- 7.2. The Site is well related to the urban area. It is not in a strategic gap and nor is it identified as a valued landscape. Moreover, the Site affords a sustainable location in helping to meet identified housing needs.
- 7.3. The Site is currently subject to an outline application with all matters reserved (except for access) for residential development of up to 32 dwellings, associated landscaping and access off North Wallington Road (LPA Ref: P/19/0894/OA). The number of dwellings has now been reduced to 29 to address comments raised by the Council during the original consultation stage.
- 7.4. The site was allocated in the draft Local Plan 2036 (policy HA20) as it was considered to be suitable, available and achievable in the SHELAA (December 2019). Since the site was allocated there has been no change in circumstances with regards to ownership, physical changes nor changes to the sustainability of the site, therefore there should be no reason for this site to be omitted from the latest incarnation of the plan.
- 7.5. The SHELAA (April 2021) sets out reasons for discounting the site, and subsequently removing it as an allocation. The reasons set out are: noise and air quality concerns and poor pedestrian and cycle links.
- 7.6. With regards to the first reason, as part of the application consultation the Environmental Health Officer raised no concern with regards to noise or air

- pollution (Appendix 11). As no objection was raised this should not be a considered a reason to discount the site.
- 7.7. In response to the second reason a supporting Sustainability Statement and Transport Statement have been provided as part of the application to demonstrate that the site is suitably located and no objection was raised by Hampshire County Council as part of the application to contradict this. The view is based on the makeup of North Wallington Road, but improvements can be made to the road as part of the application therefore addressing this issue.
- 7.8. Concerns regarding landscaping were also raised by the Case Officer as there will be views of the dwellings from Standard Way and the M27. A Landscape and Visual Appraisal was undertaken to address these matters and concluded that given the development, both residential and industrial, are already a key characteristic of the local landscape the effects on landscape would be reduced. The site is not situated within a valued landscape and would not be out of character.
- 7.9. The site was allocated in the draft Local Plan 2036 (policy HA20) as it was considered to be suitable, available and achievable in the SHELAA. Since the site was allocated in the draft Local Plan 2036, there have been no change in circumstances with regards to ownership, physical changes nor changes to the sustainability of the site, therefore there should be no reason for this site to be omitted from the latest incarnation of the plan.
- 7.10. As part of the 2017 draft Local Plan, the settlement boundary had been reviewed and extended to incorporate the site into Fareham Town's settlement boundary.
- 7.11. On the basis of the evidence prepared in support of the development of the Site for housing, the site has no physical constraints, and is well-related to the existing residential development. It is in close proximity to local services and facilities such that it affords a sustainable location in helping to meet identified housing needs whilst providing for sustainable patterns of growth.

- 7.12. We therefore consider that part of the solution to addressing the identified housing shortfall is to allocate the subject site, North Wallington and Standard Way, for residential development alongside consequential changes to the Policy Map.

### **Change sought to the Local Plan**

- 7.13. To ensure the Plan satisfies the tests of soundness (see paragraph 35 of the NPPF), **land at North Wallington and Standard Way, Wallington (SHELAA Ref: 324) should be identified as a housing allocation for circa 21 dwellings, with consequential amendments to settlement boundaries and the other designations, as detailed in other representations.**

## **8. OVERALL CONCLUSIONS**

- 8.1. Our representations have identified a number of concerns with the Regulation 19 Local Plan having regard to the tests of soundness at paragraph 35 of the NPPF.
- 8.2. As indicated in our representations, changes to policies of the Plan are advocated, including the Borough's housing requirement in Policy H1.
- 8.3. These matters can be addressed through Main Modifications.

## **9. FINAL REMARKS**

- 9.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 9.2. We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations, including the allocation of our client's site at North Wallington and Standard Way for approximately 21 dwellings.

- 9.3. Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.

# FAREHAM Local Plan 2037

## Introduction

If you have already taken part in a consultation about the Local Plan you may be wondering why we are seeking your views again.

As a result of changes to housing and employment requirements set by the Government for the Borough, the Council is now consulting on a Revised Publication Local Plan.

The special edition of Fareham Today explains in greater detail how housing need is calculated and why it has changed.

The Statement of Representations Procedure and Statement of Fact sets out how and when you can view the Revised Publication Local Plan and respond to the consultation.

You can make comments on the Plan, known as representations, up to 30 July 2021.

## What can I make a representation on?

While the Plan has been revised it remains in the final stages of consultation. This means that the consultation is very specific and does not seek views on alternative options. It invites comment on three specific questions; you will be asked whether you think the Plan is:

- **Legally Compliant:** Does the Plan meet the legal requirements for plan making as set out by planning laws?
- **Sound:** Has the Plan been positively prepared? Is it justified, effective, and consistent with national policy?
- **Complies with the Duty to Co-operate:** Has the Council engaged and worked effectively with neighbouring authorities and statutory bodies?

You can find out more about each of the questions by reading Fareham Today and the Frequently Asked Questions.

This consultation focuses on the changes to the Publication Local Plan that have made since the last round of consultation.

The changes have been highlighted on the Revised Publication Local Plan documents and you will be asked to state which revision or addition to the Plan you wish to make a representation about on the representation form. You can comment on as many changes as you would like however you will have to submit a separate form for each change.

## What happens next?

A Planning Inspector will be appointed to consider the Plan and comments from the consultation on behalf of the Secretary of State. All representations will be forwarded, together with the Revised Publication Plan, to the Planning Inspector for consideration.

# PERSONAL DETAILS

## Data Protection Privacy Statement – Consultation on the Local Plan in accordance with regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012

In order to deliver services to the citizens and communities in Fareham Borough, it is necessary for the Council to collect, gather and process personal data.

In relation to the consultation on the Revised Publication Local Plan in accordance regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012, Fareham Borough Council will collect and process personal data for the following processing purposes:

- Receiving representations to the consultation and submitting the Local Plan for examination in public.

The Council is processing this personal data by virtue of the following Lawful Basis:

- Compliance with a legal obligation
- Performance of a task carried out in the public interest.

Consultation responses will be entered onto the online consultation form. The company that host the online consultation form, Snap Surveys are ISO 27001 certified and will store the data on a secure UK server.

The Town and Country Planning (Local Planning) (England) Regulations 2012 requires that, when the Council submits the Local Plan and associated documents to the Secretary of State, for examination in public, the responses made to the consultation on the Local Plan must also be submitted. This includes the personal data collected, such as name, address and contact details.

In addition, any representations submitted will be made available on the Fareham Borough Council website. Addresses, email addresses and phone numbers will not be published.

Representations linked to plan making will be retained for no more than 5 years following adoption of the Local Plan. We will not keep this information for longer than is necessary.

You have certain rights under the General Data Protection Regulations (GDPR) in respect of your personal information. More information about your rights can be found on the Council's website or on request.

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:	Mr
First Name:	Steve
Last Name:	Carrington
Job Title: (where relevant)	
Organisation: (where relevant)	Foreman Homes Ltd
	c/o Agent
Address:	
Postcode:	
Telephone Number:	
Email Address:	

A3 Please provide the Agent's details:

Title:	Mr
First Name:	Steven
Last Name:	Brown
Job Title: (where relevant)	
Organisation: (where relevant)	Woolf Bond Planning
Address:	
Postcode:	
Telephone Number:	
Email Address:	

B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                  Go to B1c
- A new housing allocation site    Go to B1d
- The evidence base                 Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

B1c Which part of the Policies Map ?

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

B1e Which new or revised evidence base document ? E.g. Viability Assessment

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sound	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Complies with the duty to co-operate	<input checked="" type="checkbox"/>	<input type="checkbox"/>

B3 Please provide details you have to support your answers above

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

See enclosed statement

B4c Your suggested revised wording of any policy or text:

See enclosed statement

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

See enclosed statement.

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

**Revised Submission Fareham  
Borough Local Plan 2037: Regulation  
19 Consultation (June 2021)**

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**Representations Submitted on behalf of:**

**Foreman Homes Ltd**



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**Policies:  
E1 and E4d**

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**WBP REF: 7671**

**JULY 2021**



**Woolf Bond Planning**  
Chartered Town Planning Consultants

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4. CONCLUSIONS .....	<b>Error! Bookmark not defined.</b>

## **1. INTRODUCTION**

- 1.1. Our clients (Foreman Homes Ltd) have a controlling interest in land at Standard Way, Wallington. The Site has been assessed in the SHELAA as Site Ref: 20. It was also proposed as an employment allocation for 2000m<sup>2</sup> (B1, B2 or B8 use) under Policy E5 of the 2017 consultation draft Local Plan. It was removed in the previous revision of the Local Plan but has been re-allocated in the latest incarnation under policy E4d which is welcomed.
- 1.2. As such, the Site has been promoted through earlier stages of the Local Plan process and has been acknowledged as a suitable location for growth within the Borough as indicated in the SHELAA.
- 1.3. Our clients' representations upon the Draft Local Plan can be summarised as relating to the following:

<b>Policy</b>	<b>Representation</b>
Policy E1 – Employment Land Provision	Support
Policy E4d – Standard Way, Wallington	Support

## **2. POLICY E1: EMPLOYMENT LAND PROVISION**

### **General**

- 2.1 Policy E1 indicates that the Local Plan must make a provision for 121,964m<sup>2</sup> of new employment floor space over the period of 2021-2037. This provision is identified through a number of site allocations
- 2.2 The policy is in accordance with the National Planning Policy Framework's aim in building a strong, competitive economy, providing a range of types of sites throughout the borough to meet needs of future users. This policy is therefore supported.

## **3. POLICY E4d: FIVE-YEAR HOUSING LAND SUPPLY**

### **General**

- 3.1. Having regard to the representations and the earlier promotion of the site for the development for the purpose of employment, the evidence justifies the allocation of the site for 2000m<sup>2</sup> of employment space.
- 3.2. The Site is in an area that has an overriding 'urban fringe' character, due to the urban character of the adjoining industrial estate and waste transfer station. Visibility of the site is relatively limited due to existing vegetation. Access can be provided via Standard Way.
- 3.3. The Site is currently subject to an outline application for up to 2000m<sup>2</sup> of employment space and access from Standard Way, Wallington (LPA Ref: P/19/0169/OA).
- 3.4. Foreman Homes commissioned CBRE to undertake a Market Assessment to demonstrate the need for this development in this area of the Borough. The Assessment concluded that there is a significant demand for employment units in Fareham and the wider Solent Region. It is therefore necessary to retain this allocation in future publications.
- 3.5. Policy sets out four criteria that any future development on this site must adhere to. The proposal meets all of these, apart from the vehicular access which is

proposed off Standard Way and not Military Road (although it is believed that this is just a mistake within the policy).

### **Changes to the Policy**

- 3.5 The policy states that primary vehicle access shall be obtained from Military Road, this should be changed to **Standard Way** in line with the live application.

## **4. CONCLUSION**

- 4.1. We trust the above comments are of assistance in preparing the necessary main modifications to provide for a sound Local Plan.
- 4.2 We welcome the opportunity to engage in constructive dialogue with the Council in relation to our observations, including the allocation of our client's site at Standard Way, Wallington.
- 4.3 Additionally, we confirm that we wish to be notified of each further step in the preparation of the Local Plan, including its submission to the Inspectorate for examination.

**Respondent details:**

Title:	Mr
First Name:	Barrie
Last Name:	Webb
Job Title: (where relevant)	[No Reply]
Organisation: (where relevant)	[No Reply]
Address:	
Postcode:	
Telephone Number:	
Email Address:	

**1) Paragraph: HA55- Land south of Longfield Avenue**

Legally compliant	Yes
Sound	No
Complies with the duty to co-operate	Yes

**Please provide details you have to support your answers a...**

Additional development on land south of Longfield Avenue will not be able to comply with promoting walking and cycling (key policies of Central Government, Hampshire County Council and Fareham Borough Council) as routes identified in draft LCWIP do not have the potential to accommodate a modal shift to non motorised transport from the increased housing allocated. Note that the LCWIP is still in draft form and consultation is not anticipated until at least Autumn 2021. so unable to comment in detail Hampshire County Council and Fareham Borough Councils track record on covid pop up schemes to encourage walking and cycling are not good (i.e. Pier Street, Lee on the Solent modal filter - not implemented, Shoot Lane modal filter - not implemented, A27 protected lane - not implemented). Newgate Lane East, a new build road with no cycle lane provision instead relying on the old Newgate Lane for cycle route. Stubbington Bypass, shared use paths criss crossing the carriageway with no link to the A27 at Titchfield Hill Fareham NO2 Cycle Links Improvement (<https://www.hants.gov.uk/transport/transport schemes/farehamno2cyclelinks#step-1>) completed in 2019 - these improvements were identified as having the potential to make it easier or to increase walking and cycling, however no data has been made available to verify if the improvements have had any effect.

**What modification(s) is necessary to make the Revised Pub...**

Wait until the consultation on the draft LCWIP is completed, the plan is adopted, improvements are made and shown to work (i.e. walking and cycling increases and car use decreases) before any additional housing allocation is added to the local plan.

**How would the modification(s) you propose make the Revise...**

The modification will show that the framework for a coordinated approach to funding and facilitating a more convenient and efficient active travel network provided by the LCWIP is having the desired effect and the additional housing allocation can be considered in the light of confirmed data and not a hopeful wish.

**Your suggested revised wording of any policy or text:**

The housing allocation will not be considered until a modal shift to walking and cycling and decreased dependency on motorised transport has been achieved

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session

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**2) Paragraph: HA54- Land east of Crofton Cemetary and west of Peak Lane**

Legally compliant	Yes
Sound	No
Complies with the duty to co-operate	Yes

**Please provide details you have to support your answers a...**

Additional development on land east of Crofton Cemetery will not be able to comply with promoting walking and cycling (key policies of Central Government, Hampshire County Council and Fareham Borough Council) as routes identified in draft LCWIP do not have the potential to accommodate a modal shift to non motorised transport from the increased housing allocated. Note that the LCWIP is still in draft form and consultation is not anticipated until at least Autumn 2021. The track record on covid pop up schemes to encourage walking and cycling are not good (i.e. Pier Street, Lee on the Solent modal filter - not implemented, Shoot Lane modal filter - not implemented, A27 protected lane - not implemented). Newgate Lane East, a new build road with no cycle lane provision instead relying on the old Newgate Lane. Stubbington Bypass, shared use paths criss crossing the carriageway with no link to the A27 at Titchfield Hill Increased journey times from Stubbington to Fareham caused by the Stubbington bypass Fareham NO2 Cycle Links Improvement completed in 2019 - these improvements were identified as having the potential to make it easier / increase walking and cycling, however no data has been made available to verify if the improvements have had any effect.

**What modification(s) is necessary to make the Revised Pub...**

Wait until the consultation on the draft LCWIP is completed, the plan is adopted, improvements are made and shown to work (i.e. walking and cycling increases and car use decreases) before any additional housing allocation is added to the local plan.

**How would the modification(s) you propose make the Revise...**

The modification will show that the framework for a coordinated approach to funding and facilitating a more convenient and efficient active travel network provided by the LCWIP is having the desired effect and the additional housing allocation can be considered in the light of confirmed data and not a hopeful wish.

**Your suggested revised wording of any policy or text:**

The allocation will not be considered until a modal shift to walking and cycling and decreased dependency on motorised transport has been achieved

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session

---

**3) Paragraph: HA56- Land west of Downend Road**

Legally compliant	Yes
Sound	No
Complies with the duty to co-operate	Yes

### **Please provide details you have to support your answers a...**

Additional development on land west of Downend Road will not be able to comply with promoting walking and cycling (key policies of Central Government, Hampshire County Council and Fareham Borough Council) as routes identified in draft LCWIP do not have the potential to accommodate a modal shift to non motorised transport from the increased housing allocated. Note that the LCWIP is still in draft form and consultation is not anticipated until at least Autumn 2021. so unable to comment in detail The track record on covid pop up schemes to encourage walking and cycling are not good (i.e. Pier Street, Lee on the Solent modal filter - not implemented, Shoot Lane modal filter - not implemented, A27 protected lane - not implemented). Newgate Lane East, a new build road with no cycle lane provision instead relying on the old Newgate Lane for cycle route. Stubbington Bypass, shared use paths criss crossing the carriageway with no link to the A27 at Titchfield Hill Fareham NO2 Cycle Links Improvement completed in 2019 - these improvements were identified as having the potential to make it easier / increase walking and cycling, however no data has been made available to verify if the improvements have had any effect. A27 cycle provision - The Delme to Downend Bus and Cycle TCF scheme at this location comprises: Northern footway widened to create SUP between St Catherine's Way and Downend Road signalised junction; A DISTANCE OF 213m TO BE PRECISE! The special edition of 'Fareham Today' states that "Traffic modelling has been undertaken for a proposed new road infrastructure to support this development. Results, which have been independently audited, show that current traffic levels and waiting times would actually reduce as a result of traffic being redistributed locally" How can a (potential) yield of 550 houses lead to a reduction in traffic levels?

### **What modification(s) is necessary to make the Revised Pub...**

Wait until the consultation on the draft LCWIP is completed, the plan is adopted, improvements are made and shown to work (i.e. walking and cycling increases and car use decreases) before any additional housing allocation is added to the local plan. This is particularly relevant at this location as providing " high quality pedestrian and cycle links to the A27 Rapid Transit corridor (via Downend Road, The Thicket, Upper Cornaway Lane and Paradise Lane) connecting to Fareham Town Centre and railway station, Portchester, Portsmouth and local employment hubs" will be particularly challenging

### **How would the modification(s) you propose make the Revise...**

The modification will show that the framework for a coordinated approach to funding and facilitating a more convenient and efficient active travel network provided by the LCWIP is having the desired effect and the additional housing allocation can be considered in the light of confirmed data and not a hopeful wish.

### **Your suggested revised wording of any policy or text:**

The allocation will not be considered until a modal shift to walking and cycling and decreased dependency on motorised transport has been achieved based on sound evidence

### **If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session

# PERSONAL DETAILS

A1 Is an Agent Appointed?

Yes

No

A2 Please provide your details below:

Title:

MR

First Name:

MALCOLM

Last Name:

WEBSTER

Job Title: (where relevant)

RETIRED

Organisation: (where relevant)

N.A.

Address:

Postcode:

Telephone Number:

Email Address:

A3 Please provide the Agent's details:

Title:

First Name:

Last Name:

Job Title: (where relevant)

Organisation: (where relevant)

Address:

Postcode:

Telephone Number:

Email Address:

## PERSONAL DETAILS

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B1

Which part of the Revised Publication Local Plan is this representation about?

- A paragraph                      Go to B1a
- A policy                              Go to B1b
- The policies map                      Go to B1c
- A new housing allocation site      Go to B1d
- The evidence base                      Go to B1e

B1a Which Paragraph? Please enter the correct paragraph found in the Revised Publication Local Plan, e.g. 1.5 would be the fifth paragraph in chapter 1

-----

B1b Which Policy? Please enter the correct policy codes from the Revised Publication Local Plan, e.g. HA1 is Housing Allocation Policy 1- North and South of Greenaway Lane

-----

B1c Which part of the Policies Map ?

-----

B1d Which new housing allocation site? E.g. HA55- Land south of Longfield Avenue

HA 56                      West of Downend Road

B1e Which new or revised evidence base document ? E.g. Viability Assessment

Proposed Link Road.

B2 Do you think the Revised Publication Local Plan is:

	Yes	No
Legally compliant	<input type="checkbox"/>	<input type="checkbox"/>
Sound	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Complies with the duty to co-operate	<input type="checkbox"/>	<input type="checkbox"/>

B3 Please provide details you have to support your answers above

See attached.

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation.

B4a What modification(s) is necessary to make the Revised Publication Local Plan legally compliant or sound?

B4b How would the modification(s) you propose make the Revised Publication Local Plan legally compliant or sound?

B4c Your suggested revised wording of any policy or text:

Please remember this may be your only chance to make a representation, so try to make sure you put in all the evidence and information needed to support your representation. You do not need to resubmit any comments you made during a previous Publication Local Plan Consultation.

B5a If your representation is seeking a modification to the plan, do you consider it necessary to participate in the examination hearing session(s)?

Yes, I want to take part in a hearing session

No, I don't want to take part in a hearing session

B5b Please outline in the box below why you consider it necessary to take part in the hearing session(s):

The Inspector will decide on who will appear at the hearing(s). You may be asked to take part when the Inspector has identified the matters and issues for examination.

Thank you for taking part and having your say.

**FAREHAM**  
BOROUGH COUNCIL

Re: A56 West of Downend Road Development.

The "Future Development Plan" for the West of Downend Road shows a "Proposed Relief Road" connecting Downend Road to the A27 exit road from J11 of the M27.

Although there is little detail for the Western end of this road it will obviously be a "T" junction with traffic lights.

Vehicles leaving J11 and especially the Westbound slip road from the M27 proceeding either down the slip road to the Delme roundabout or the Gosport/Fareham lanes are usually travelling at least 40mph and today (16<sup>th</sup> July 1300 hrs) in excess of 50mph. At peak times and especially in the evenings traffic backs up from the Gosport Road on to Quay Street and Delme roundabouts in Fareham and on to the slip lanes on J11. Occasionally it backs up on to the slow lane of the West bound M27.

The back-up is caused by the traffic lights at the junction of the Gosport Road and Salterns Lane, South of Fareham. When schools are on holiday, traffic is reduced and the back-up less.

The proposal is for the junction to enter the A27/J11 road at the position of the lay-by. The lay-by being got rid of.

Today (22<sup>nd</sup> July at 1330) the lay-by was full of large HGVs drivers taking their mandatory break and also an AA recovery vehicle sorting out a vehicle recovered from the M27. This lay-by is in constant use and if removed where will these vehicles park?

Traffic lights are proposed for this junction to allow vehicles from the Development to enter the A27 turning both left and right. This means all 6/7 lanes of traffic will be stopped. As there are traffic lights at J11 installing another set just a few hundred meters away will only cause longer queues on the motorway slip roads and on to the M27.

Presently traffic traversing Portsdown Hill Road in the evening either descends Downend Road to the A27 or Swivelton Lane/ Boarhunt Road. The proposed road will become a very busy "RAT" run. Human nature is such that drivers will take the easiest route, which is through the new development.

It is proposed traffic requiring to enter the Western end of the development from Fareham will have to traverse J11 before turning left into the road. This will add to the already congested traffic on J11.

This proposed road is also going to increase the traffic to the Delme roundabout already a traffic bottleneck.

As part of the planning for the A56 development there is a traffic modelling statement, "Results, which have been independently audited, show that current traffic levels and waiting times would actually reduce as a result of traffic being redistributed locally". With more traffic generated by

the development and also from the proposed Downend Miller Development, how has this conclusion been arrived at?

To enter either of these developments from either the Fareham or Portchester direction, the easiest route is along the main A27 and turn North at the Downend traffic lights. Nobody from these areas are going to enter from the Western end of the proposed new road as they will have to go around the J11. Also, this would add more traffic to an already busy roundabout and queues from the proposed set of new traffic lights. The alternative and easier route for residents of the two estates means more traffic up Downend Road and increased waiting times!



5<sup>th</sup> August 2021

Head of Planning Strategy  
Fareham Borough Council  
Civic Offices  
Fareham  
PO16 7AZ

Dear Ms Wootton

Local Plan Consultation.

Thank you for your letter dated 30<sup>th</sup> July 2021 which I received yesterday.

Yes, I would like to attend the "Examination Process" when I can answer any queries raised by the Inspector on points I have raised.

I have been monitoring the proposed Western exit of the Link Road from the development H 56 and the implications for the removal of the layby and installation of extra traffic lights. I am of the opinion this needs to be re-thought.

Yesterday there was an AA Recovery vehicle sorting out a motorcar towed from the M27 and also at the same time a RAC Recovery vehicle doing likewise. Three large HGVs were also parked there.

Obviously having read the procedures on how to submit my comments to the Plan and deadline dates paragraphs 3 and 4 of your letter are repeats and irrelevant. Please do not underestimate the intelligence of Fareham Residents.

Your sincerely

A solid black rectangular redaction box covering the signature area.

Malcolm Webster



**Respondent details:**

Title:	Mrs
First Name:	Jane
Last Name:	Wedick
Job Title: (where relevant)	[No Reply]
Organisation: (where relevant)	[No Reply]
Address:	[Redacted]
Postcode:	[Redacted]
Telephone Number:	[Redacted]
Email Address:	[Redacted]

**1) Paragraph: HA55- Land south of Longfield Avenue**

Legally compliant	No
Sound	No
Complies with the duty to co-operate	No

**Please provide details you have to support your answers a...**

It is essential to keep a green gap and not merge Stubbington and Fareham. The environment needs a corridor of large green spaces not individual patches.

**What modification(s) is necessary to make the Revised Pub...**

Leave a green space

**How would the modification(s) you propose make the Revise...**

Green spaces support nature and also are essential for mental wellbeing.

**Your suggested revised wording of any policy or text:**

Not to build on this land

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session

**Respondent details:**

Title:	mr
First Name:	ADAM
Last Name:	WELLS
Job Title: (where relevant)	[No Reply]
Organisation: (where relevant)	[No Reply]
Address:	[REDACTED]
Postcode:	[REDACTED]
Telephone Number:	[REDACTED]
Email Address:	[REDACTED]

**1) Paragraph: HA52- Land West Dore Avenue, Portchester**

Legally compliant	No
Sound	No
Complies with the duty to co-operate	No

**Please provide details you have to support your answers a...**

This area is a natural meadow with various native trees and harbouring a diverse collective of wildlife including slow worms. Building on these valuable areas is irresponsible and as Portchester is one of the areas lacking in canopy tree cover we should be adding to these areas with more tree planting and wildlife enhancement.

**What modification(s) is necessary to make the Revised Pub...**

Take the Dore avenue site of the local plan

**How would the modification(s) you propose make the Revise...**

Take dore avenue off the local plan

**Your suggested revised wording of any policy or text:**

Take Dore avenue off the local plan

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session

**Respondent details:**

Title:	Mrs
First Name:	Audrey
Last Name:	Welsh
Job Title: (where relevant)	[No Reply]
Organisation: (where relevant)	[No Reply]
Address:	
Postcode:	
Telephone Number:	
Email Address:	

**1) Paragraph: HA56- Land west of Downend Road**

Legally compliant	No
Sound	No
Complies with the duty to co-operate	No

**Please provide details you have to support your answers a...**

Like the Winham Farm development the does not appear to be a safe way for school children to cross the railway to go to school. A virtual footpath is not good enough. This development also appears an area similar to the 'Forts' in the corner, is they any archeological interest in this site? I am also concerned about the closing of the strategic gap and loss of green space/ agricultural land.

**What modification(s) is necessary to make the Revised Pub...**

.

**How would the modification(s) you propose make the Revise...**

.

**Your suggested revised wording of any policy or text:**

.

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session

**2) Paragraph: BL1- Broad Location for Housing Growth**

Legally compliant	No
Sound	No
Complies with the duty to co-operate	No

**Please provide details you have to support your answers a...**

I note that some of these town/village centre developments are built above shops or above existing flats over shops. They generally do not have lifts so limit the occupiers to young single people or young couples with no children. As the town/village centres are mainly based around the daytime economy, why would they wish to live there with nothing to do in the evening? They needs to be a strategy to revitalise the town/ village centres as this will re-invigorate the community.

**What modification(s) is necessary to make the Revised Pub...**

.

**How would the modification(s) you propose make the Revise...**

.

**Your suggested revised wording of any policy or text:**

.

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session

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**Respondent details:**

Title:	Mrs
First Name:	Aimee
Last Name:	White
Job Title: (where relevant)	[No Reply]
Organisation: (where relevant)	[No Reply]
Address:	[Redacted]
Postcode:	[Redacted]
Telephone Number:	[Redacted]
Email Address:	[Redacted]

**1) Paragraph: HA55- Land south of Longfield Avenue**

Legally compliant	No
Sound	No
Complies with the duty to co-operate	No

**Please provide details you have to support your answers a...**

We were promised, again, not that I ever believe Woodward when he talks, that there would be no development on the stubbington bypass. Now in CAT meeting, he says, this is different, as there is a tiny stretch of land between Longfield and bypass. Hes splitting hairs and misleading people. Stick the houses on Daedalus. The place is hemorrhaging money. It's the biggest brownfield in Fareham. Save the green spaces. Whilst you are at it, build more council houses. Your proposal doesn't even begin to address how many we need. Unfortunately I don't have any faith in this process, and believe he will do what he wants anyway.

The cemetery as it is (before the bypass) is a lively tranquil spot. Relatives laid people to rest there because of its location. Now you want to build all around it, destroying the area and natural habitat.

**What modification(s) is necessary to make the Revised Pub...**

Stop misleading people

Stop building in greenfields

**How would the modification(s) you propose make the Revise...**

Stop building on greenfields

Stop wasting money on Daedalus, and build the houses on that massive brownfield site. Build yourself a lego runway if you still want to get your flying kicks. This area is massive and it's the first place that we should be looking at for houses

**Your suggested revised wording of any policy or text:**

Tell us exactly how many empty homes and business that we have in the Borough already to look at developing those. Build on Daedalus

Stop building in greenfields

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session

No, I don't want to take part in a hearing session

---

**Respondent details:**

Title:	Mr
First Name:	Anthony
Last Name:	Wilde
Job Title: (where relevant)	Retired
Organisation: (where relevant)	[No Reply]
Address:	
Postcode:	
Telephone Number:	
Email Address:	

**1) Paragraph: HA56- Land west of Downend Road**

Legally compliant	No
Sound	No
Complies with the duty to co-operate	No

**Please provide details you have to support your answers a...**

I wish to strongly protest the plan as defined under Edge of Town Living page 9. I refer to the designated area West of Downend Road. Although mentioned in the text but omitted from the diagram, is the still outstanding issue of the land to the east of the Down End road, namely Wynham Farm which is under objection. That area consisting of 350 houses plus this new proposed area of 550 houses combine to make 900 houses. The main objection to the Wynham Farm site was the additional traffic on the Down End road and the bridge which is totally inadequate for the additional volume. There are times when we in the Down End estate take up to 10 minutes just to get onto the the Down End road to get out due to the continuous traffic flow using the hill road as a "RAT" run. To add a further possible 1800 vehicles is totally unacceptable, apart from the extra fumes which have already made the area a danger spot for health. I note there is a proposed link road for which no details are shown or defined except some very loose wording which implies that we should see reduced traffic to the south of the Down End road, along the A27 between the Down End junction and the Delme roundabout and also the motorway link road. One has to question the modelling tool that can one add some 1800 vehicles (based on 2 per household) and suddenly reduced traffic. Also with some 900 house there must also be an increase in public transport. Already, it is not uncommon to find traffic queuing back from the lights on the A27 Down End road back up and over the Down End railway bridge. This traffic just sits with their engines idling pumping obnoxious fumes which permeates throughout the Down End estate. This situation will only get worse as the problem is caused by trying to squeeze so much traffic into Gosport, especially during the rush hours. The key element missing from the plan is a structured transport policy designed to remove some of the vehicles from the road. It is thought the Stubbington by-pass will help but if you care to talk with the possible users they all say they will not travel the extra distance past junction 11 and come off at junction 9 just to get to Gosport. Where is a decent tram system that could link Portsmouth, Gosport and Fareham and possible extend out to Whitley, Wickham and perhaps Hedge End. Just continually adding more houses without an integrated transport solution is NOT the answer.

**What modification(s) is necessary to make the Revised Pub...**

To publish a full compliant integrated transport policy which takes into account the traffic issues present today and those that will transpire as a result of the housing proposals.

**How would the modification(s) you propose make the Revise...**

It will show the shortcomings of the statement made about increasing housing yet reducing traffic flow problems.

**Your suggested revised wording of any policy or text:**

There is no revised wording as there appears to be a flaw in the statement. You cannot increase housing yet reduce traffic. I refer to the statement and map at the bottom of page 9. There is no support to the statement of an independent audit. I question the modelling tool that reached this conclusion.

**If your representation is seeking a modification to the P...**

Yes, I want to take part in a hearing session

**Please outline in the box below why you consider it neces...**

To ensure that the issue is understood.

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**Respondent details:**

Title:	Mrs
First Name:	Shirley
Last Name:	Wilkinson
Job Title: (where relevant)	[No Reply]
Organisation: (where relevant)	[No Reply]
Address:	[Redacted]
Postcode:	[Redacted]
Telephone Number:	[Redacted]
Email Address:	[Redacted]

**1) Paragraph: HA55- Land south of Longfield Avenue**

Legally compliant	No
Sound	No
Complies with the duty to co-operate	No

**Please provide details you have to support your answers a...**

As a non-lawyer, an ordinary citizen and resident of Fareham, I find this 'consultation' procedure, of only being allowed to comment on 3 specifics -as selected by the council - highly unhelpful. It appears to be designed to curtail any true comments regarding the Revised Publication Local Plan. Hence I offer my thoughts under the 3 categories regarding P/20/0646/0A Legally compliant:- A law passed by central government to try to encourage more development may be 'legal'- but may not be wise in specific cases! A Council may feel that it is being 'bullied' into supplying a proscribed number of houses according to a central government algorithm. (Look what happened when an algorithm was used last summer to create GCSE and A Level predictions!!) So, it may be 'legal', but not sensible or desirable to build so many dwellings in this specific area. Sound:- Building 1250 houses in this already overcrowded and congested area, removing a large part of the recognised strategic gap, and with all the environmental and traffic concerns expressed in the past – by the majority of local residents in this area- is not sound! Duty to cooperate – This is a ridiculous category and notion! The government algorithm has presumably decreed, for example, that Hampshire must produce X number of houses? Some councils in this region – not identified clearly- can't – (no more land, except out to sea perhaps?)- so Fareham has to give up some of its open spaces to help out and fulfil this arbitrary number. (Interestingly, this process is exactly what Stalin did in Soviet Russia with setting arbitrary targets!). To destroy whole neighbourhoods to 'cooperate' in this way is a betrayal of trust by one's own Council. I trust that any independent Inspector will consider these points carefully and decline any further development of this size and nature

**What modification(s) is necessary to make the Revised Pub...**

[Read previous statement](#)

**How would the modification(s) you propose make the Revise...**

[Read previous statement](#)

**Your suggested revised wording of any policy or text:**

[Read previous statement](#)

**If your representation is seeking a modification to the P...**

Yes, I want to take part in a hearing session

**Please outline in the box below why you consider it neces...**

As a resident, it will be interesting to hear the evidence and submissions given to the inspector and his/her examination of our representations

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**Respondent details:**

Title:	Mr
First Name:	Alan
Last Name:	Williams
Job Title: (where relevant)	[No Reply]
Organisation: (where relevant)	[No Reply]
Address:	
Postcode:	
Telephone Number:	
Email Address:	

1) Paragraph: HA51- Redoubt Court, Fort Fareham Road

Legally compliant	No
Sound	No
Complies with the duty to co-operate	No

**Please provide details you have to support your answers a...**

The loss of public open space means that this allocation is not sound.

**What modification(s) is necessary to make the Revised Pub...**

Remove allocation

**How would the modification(s) you propose make the Revise...**

Yes because it no longer exists

**Your suggested revised wording of any policy or text:**

n/a

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session

2) Paragraph: HA55- Land south of Longfield Avenue

Legally compliant	No
Sound	No
Complies with the duty to co-operate	No

**Please provide details you have to support your answers a...**

This allocation has been made in response to repeated planning applications for which there isn't currently policy provision for development in this location. This is not a legally compliant or sound way to make policy or to allocate land for development.

**What modification(s) is necessary to make the Revised Pub...**

Remove the allocation. Allocation should be made on the basis of sound planning policy not previous non-compliant planning applications

**How would the modification(s) you propose make the Revise...**

Remove the allocation

**Your suggested revised wording of any policy or text:**

n/a

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session

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**Respondent details:**

Title:	Mr
First Name:	Andrew
Last Name:	Wilson
Job Title: (where relevant)	[No Reply]
Organisation: (where relevant)	[No Reply]
Address:	
Postcode:	
Telephone Number:	
Email Address:	

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**1) Paragraph: HA55- Land south of Longfield Avenue**

Legally compliant	No
Sound	No
Complies with the duty to co-operate	No

**Please provide details you have to support your answers a...**

This land is entirely within an established strategic gap and as such should remain undeveloped.

**What modification(s) is necessary to make the Revised Pub...**

All planning allocations within HA55 to be removed from the plan.

**How would the modification(s) you propose make the Revise...**

By restoring the Strategic Gap to its original planned use.

**Your suggested revised wording of any policy or text:**

The area HA55 is to remain an undeveloped strategic gap.

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session

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**White, Lauren**

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**From:** [REDACTED]  
**Sent:** 23 July 2021 11:21  
**To:** Planning Policy  
**Subject:** Winchester City Council consultation response

Dear Planning Policy team,

Regulation 19 Local Plan Consultation (18th June – 30th July 2021):

Thank you for the opportunity to comment on your Regulation 19 plan. Winchester City Council has the following comments to make. Winchester City Council is responding to this consultation on the basis that it has already made comments on a previous version of the Regulation 19 Local Plan which will not be repeated here but which still stand unless otherwise mentioned here.

Strategic Policy H1: Housing Provision

The City Council supports the intention of Policy H1 to meet the Borough's housing requirement under the Standard Methodology which has resulted in an increase in provision over the previous Regulation 19 Consultation it is noted that the unmet needs of neighbouring authorities will also be subject to the standard methodology requirement.

There is still the potential for change of numbers in respect of the requirement to contribute to meeting unmet need in neighbouring authorities, pending an updated Partnership for South Hampshire Joint Strategy. There is some uncertainty around the final numbers that will need to be met and the Duty to Cooperate requirement.

The council is supportive of the added text (shown highlighted yellow) at 10.16 which refers to the Parkway / Leafy Lane junction,

10.16 Where applications are shown to impact on one or more of these junctions identified in the Strategic Transport Assessment, contributions will be sought to deliver mitigation schemes in line with Policy TIN2. The Parkway/Leafy Lane junction does not warrant a mitigation scheme for increased junction capacity because the junction arm leads to a 20 mph zone, residential area with vertical speed reduction measures. This scheme will therefore require an environmental based traffic constraints solution to continue to reduce the likelihood of 'rat running' at this location. The nature of this scheme will require further discussions with the local highway authority and Winchester City Council to establish the form of any mitigation scheme required.

End of comments.

**Jill Lee MRTPI**  
Principal Planning Officer  
Strategic Planning Team





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**Respondent details:**

Title:	Miss
First Name:	Natalie
Last Name:	Wood
Job Title: (where relevant)	[No Reply]
Organisation: (where relevant)	[No Reply]
Address:	
Postcode:	
Telephone Number:	
Email Address:	

**1) Paragraph: HA52- Land West Dore Avenue, Portchester**

Legally compliant	Yes
Sound	No
Complies with the duty to co-operate	Yes

**Please provide details you have to support your answers a...**

Fails on soundness . Development is not justified - Welbourne is on its way. It is touted as a "garden village". Filling in green gaps in other areas thus making them a less pleasant place to live and play is not a "reasonable" alternative. Why should people in other areas lose their green areas now, green areas which were planned at the time of construction, in the same way that Welbourne's green areas will be? There are currently 32 properties on the market in Portchester. If housing were needed that desperately, there would be NONE for sale as they would all have been snatched up the instant they went on the market.If you build on the Eleanor's Wood site, it sets a dangerous precedent for the Dore Avenue estate, well known and loved for it's green spaces. Where next? the space between Danes Road and Camelot Crescent? High View Park? Nothing will be safe from development if Eleanor's Wood goes ahead. Fareham had 475 empty homes in 2020. Use those instead - that's a reasonable alternative. <https://www.hampshirelive.news/news/hampshire-news/more-empty-homes-hampshire-now-4803989>

**What modification(s) is necessary to make the Revised Pub...**

removal of Eleanor's wood (Dore Ave) site from the plan

**How would the modification(s) you propose make the Revise...**

Because it proposes and takes into account reasonable alternatives - waiting for welbourne and use of 475 other empty homes in the meantime.

**Your suggested revised wording of any policy or text:**

removal of Eleanor's wood (Dore Ave) site

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session

**Respondent details:**

Title:	Mr
First Name:	russ
Last Name:	Wright
Job Title: (where relevant)	[No Reply]
Organisation: (where relevant)	[No Reply]
Address:	
Postcode:	
Telephone Number:	
Email Address:	

**1) Paragraph: Strategic housing & Employment Land Availability Assessment (SHELAA)**

Legally compliant	Yes
Sound	No
Complies with the duty to co-operate	Yes

**Please provide details you have to support your answers a...**

The Revised Publication Local Plan adds new vehicular accesses to HA1 (from Brook Lane) that were not included in the previous version of the Local Plan. In particular the two proposed access routes above the one furthest South on Brook Lane had been previously removed but have re-appeared in this version? I do not believe the site requires 3 vehicular access points in that short stretch of the road. Please adjust to show just the one access (opposite Thornton Avenue) which was in the previous version of the Local Plan. The introduction of the additional access points without consultation would make this Plan unsound.

**What modification(s) is necessary to make the Revised Pub...**

Remove the 2 access points onto Brook Lane, as mentioned in my comment for HA1

**How would the modification(s) you propose make the Revise...**

It would be consistent with the previously consulted Local Plan.

**Your suggested revised wording of any policy or text:**

Remove from the Maps, the vehicular access points for HA1 which are 2nd and 3rd from the south on Brook Lane

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session



**Respondent details:**

Title:	Mrs
First Name:	Valerie
Last Name:	Wyatt
Job Title: (where relevant)	[No Reply]
Organisation: (where relevant)	[No Reply]
Address:	[Redacted]
Postcode:	[Redacted]
Telephone Number:	[Redacted]
Email Address:	[Redacted]

**1) Paragraph: 3.3**

Legally compliant	No
Sound	No
Complies with the duty to co-operate	Yes

### **Please provide details you have to support your answers a...**

'where it is not' is the phrase my comment relates to for the purpose of a change. I would like to point out that paragraph 3.9 concludes that there are no housing allocations in the Hamble valley (among other areas listed) hence 'where is not' being the revision. Although the eastern section of area 02.2a (as described in the 2017 and 2020 documents listed in 3.9) has been removed from the ASLQ, the western section is still included. This geographical area includes Brook Avenue, where HA32 Egmont Nursery is situated, therefore it is not factually correct to say that there are 'no development allocations' in the areas listed. Brook Avenue is situated in the valley of the River Hamble and the two documents I have cited agree. The Fareham Local Plan 2037 Figure 3.3 page 31 shows the Areas of Special Landscape Quality in Fareham Borough but there has been a small hole cut out of it to accommodate this housing development site. This makes no sense when the area is considered in reality. The site is a former nursery which closed down nearly 20 years ago. Less than a quarter of the site is covered in derelict, low rise wooden framed greenhouses overgrown with ruderal vegetation. The north western quadrant of the site was used for grazing horses until 2017 and now, along with most of the site, is green open space. The site is fronted by a native species hedge which allows views through to the adjacent Holly Hill Nature Reserve with its area of ancient woodland only 34 metres from the site boundary. 200 metres away downhill to the northwest are the protected sites of the River Hamble (SPA, SAC and Ramsar). It also forms a valuable link in the Local Ecological Network (see Fareham Local Plan 2037 Appendix C page 332). The site is an integral part of the local landscape which has been recognized as having qualities which are worthy of protection from urban encroachment. The housing development was granted permission in spite of it being contrary to policies and strategies in the extant development plan. Although the judicial review of this decision was dismissed in the High Court in May 2021, local residents have asked the Court of Appeal for permission to appeal the judgment as we wish to protect the semi rural character of this part of Warsash. The planning officer in his report to the planning committee even said 'the development would have an urbanising effect which would be harmful to the character and appearance of the countryside'. The site is 140 metres away from the urban boundary and over 400 metres from Brook Lane, the nearest public highway. The road is a private street with no footway and is less than 5.5 metres wide in places. There are only 2 street lights along the route to Brook Lane. In the SHELAA April 2021 no mention is made of the pedestrian access to the site of HA32 Egmont Nursery but for Discounted Housing Site 3050 (page 161) which is 200 metres closer to Brook Lane, it says that footway provision would be required. Construction of a footway would not be feasible because of the narrow width and ownership of the road. The application, (P/18/0592/OA) should not have been granted permission as it failed to meet the criteria under the extant plan. This application would also fail to meet the necessary criteria under the proposed new plan. According to Policy HP2: New Small-Scale Development Outside Urban Areas not more than four dwellings would be permitted, so principally it would fail on the number of dwellings, but it would also fail on most of the other criteria. Under Policy HP4: Five-Year Housing Land Supply it would fail as it is not adjacent to the existing urban boundary and therefore it would not meet all of the criteria for that policy too. It would also have unacceptable environmental, amenity and traffic implications. I understand that the current application's status is beyond the remit of the Planning Inspectorate but you have the opportunity to remove this unsuitable housing allocation from the Fareham Local Plan 2037 should the planning permission be quashed before the adoption process is completed.

### **What modification(s) is necessary to make the Revised Pub...**

If the planning permission is not quashed by the Court of Appeal then Hamble should be removed from the main text and 3.9 should end with 'except HA32 in the Hamble valley.'

### **How would the modification(s) you propose make the Revise...**

It would make it factually correct.

### **Your suggested revised wording of any policy or text:**

See above

### **If your representation is seeking a modification to the P...**

Yes, I want to take part in a hearing session

### **Please outline in the box below why you consider it neces...**

The Planning Inspector may wish to understand why permission was given for this development although it was contrary to the extant plan which had been previously adopted.

**Respondent details:**

Title:	Dr.
First Name:	Edward
Last Name:	Wynn
Job Title: (where relevant)	[No Reply]
Organisation: (where relevant)	[No Reply]
Address:	
Postcode:	
Telephone Number:	
Email Address:	

**1) Paragraph: HA56- Land west of Downend Road**

Legally compliant	Yes
Sound	No
Complies with the duty to co-operate	Yes

**Please provide details you have to support your answers a...**

On the bottom right of page 9 of the Fareham Today Local Plan Special you show a diagram based on some of the results of traffic modelling resulting from the provision of a link road. I very much doubt that these results can be true. They depend crucially on two things. The estimated number of vehicles presently travelling from the east to the M27 and from the M27 to the east. Also the estimated number of vehicles from the proposed 550 + 350 = 900 houses on the land to the west and to the east of Downend Road that are travelling to the M27 and towards Fareham centre and from the M27 and Fareham centre to these homes. I have no access to the traffic modelling but the independent auditor has. Does the auditor's report state explicitly that these crucial quantities are plausibly estimated? If it does not state this clearly then your diagram is not sound and needs to be removed until such assurance is obtained. I have already pointed out that the proposed development east of Downend Road is guaranteed to increase the traffic levels and waiting times on the roads highlighted. As I have also already said, both proposed developments are, sadly, in the wrong place. PS I am in no way qualified to judge any other parts of the plan and so my replies of Yes above signify nothing since I am forced to answer Yes or No.

**What modification(s) is necessary to make the Revised Pub...**

No comment.

**How would the modification(s) you propose make the Revise...**

The auditor indicates that they agree with the modelling and the estimating for the various parameters in the model.

**Your suggested revised wording of any policy or text:**

No comment.

**If your representation is seeking a modification to the P...**

No, I don't want to take part in a hearing session