



**FAREHAM BOROUGH COUNCIL
LOCAL PLAN PART 2
DEVELOPMENT SITES AND POLICIES PLANS**

**ISSUE 1: RESPONSE TO THE GLADMAN CASE
AND THE JOINT OPINION**

FOR PERSIMMON HOMES PLC

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Response to Inspector's Question 7.1

Bearing in mind the legal judgement referred to in my Questions 1 to the Council (and the Council's response) is the Council's approach towards the identified housing requirement justified and in all other respects sound?

1.0 Gladman Developments Ltd v Woking Borough Council

1.1 The Inspector, David Hogger, has sought a response from the Council in respect of this Case. The judgment was issued in July 2014. The Council instructed Mr Neil Strachan QC and a fellow barrister to provide a response, now known as the Joint Opinion.

1.2 The principal point made in the judgment in the Gladman Case was that the failure to address the objectively assessed need did not make the latest document "unsound". I have examined the elements of the Gladman Case and the response of the Joint Opinion and I wish to make the following points.

2.0 Joint Opinion

2.1 The Joint Opinion supported the judgment of Mr Justice Lewis in the Gladman Case. The Joint Opinion considered that the Local Plan Parts 2 and 3 should not be found "unsound" on two particular grounds. The first was the fact that Council proposed to make an 'Early Review' of the Core Strategy and that it could not undertake a "full and objective assessment of the housing provision" because it had to await the updated figures from PUSH. This organisation proposed to provide revised guidance on housing provision by 2016.

2.2 I do not accept that the relevance of this Case. The backgrounds are different. I do not accept the analysis set out in the Joint Opinion on two grounds. I believe that the Local Plan should be suspended in the same manner that was required in East Hampshire.

- 2.3 In the first instance, the case for an **immediate review** is based upon the “shortfall” arising from the discrepancy between the figure of 5350 set out in the adopted Core Strategy and the latest figure for the Welborne Plan of 2860 which left an immediate shortfall of 2490 dwellings. There is also the uncertainty of the performance of Welborne over the first five years.
- 2.4 I do not believe that the Local Plans should not be “ring fenced”. This is clear from Paragraph 2 of the Joint Opinion, headed “Factual Background” that states:-
- “The Fareham Local Plan is intended to consist of three parts, namely: (i) Local Plan Part 1 The Core Strategy (“the Core Strategy”); (ii) Local Plan Part 2: Development Sites and Policies (“the DSP”); and (iii) the Welborne Plan.”**
- 2.5 It is evident that authors of the Joint Opinion considered that the three documents comprise the Development Plan.
- 2.6 The Council contended at the Examination of Local Plan Part 3 that Welborne was a sub regional SDA and it supported the overall PUSH requirements and should be “ring fenced”. However, it is evident that the other sub-regional SDA in the SEP has been dropped and that the residual figures are now to be distributed within the emerging Eastleigh Borough Local Plan.
- 2.7 There is no evidence that the “shortfall in the Core Strategy” has ever been addressed by PUSH as advocated by the Inspector in paragraph 28 of his Report. None of the other Districts in PUSH had considered this shortfall and most are too advanced to consider this now.
- 2.8 It is difficult to see the relevance of the proposals to provide figures for the period beyond 2026 of 6500-7500 (paragraph 3). This is especially questionable as Policy WEL 3 now proposes just 6000 (paragraph 5). This latter figure is supported by the prospective developers. There is further uncertainty as it is not known how these figures relate to the future housing figures for the Borough

beyond 2026. This appears to pre-empt future discussions of housing provision post 2026.

2.9 Paragraph 8 of the JO notes that the SHMA does not provide definitive figures for Fareham. It states that any revisions to the figures should await the outcome of the revised South Hampshire Strategy. This is due in 2016 and it is expected to cover the period to 2036.

2.10 Paragraph 9 states that the Council proposes to undertake an 'Early Review' of the Core Strategy in accordance with the revised South Hampshire Strategy (see also paragraph 9, sub paragraph 1.10). Even if this was published in 2016, the planning process would probably take a further 2 to 3 years which means that the revised Core Strategy would not be in place until 2018-19 ie 4 to 5 years from now. It is unreasonable to await the publication of this Strategy which could be subject to further delay while the shortfall was not addressed.

2.11 Paragraph 17 seems to imply that Local Plan Part 3 does not have to be in conformity with the Core Strategy. This cannot be acceptable when the reduction is over 46% in the housing provision. This clearly has implications for the sub-region as well as the Borough. Welborne (NFSDA) was originally expected to provide 12.5% of the requirement for South Hampshire (10,000 of the 80,000). The figures in the South Hampshire Strategy (2012) indicated that Welborne should provide 5400 dwellings of the 55,000 proposed for South Hampshire (ie almost 10%). The reduction to 2860 means that there is a sub-regional shortfall which has not been addressed.

2.12 Paragraphs 21-31 address the NPPF. Paragraph 21 identified the reference to "rapid change" and quotes paragraph 14 of the NPPF which states, inter alia, that

"For plan making, this emphasises that local plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change".

- 2.13 The assessment of the “objectively assessed needs” may have to await the sub-regional guidance. However, there is I repeated my opinion that the review was urgent because of the identified shortfall.
- 2.14 Paragraph 31 refers to the Planning Policy Guidance and paragraph 8 of the PPG is quoted that states that
- “Local Plans may be found sound conditional upon a review in whole or in part within five years of the date of adoption”.**
- 2.15 This would require the review to be completed by 2016 (five years from adoption of the Core Strategy). However, paragraph 27 of the PPG is also quoted which states that:-
- “Local Plans can pass the test of soundness where local planning authorities have not been able to identify sites or broad allocations for growth in years 11-15”**
- 2.16 I believe that the difference between the Gladman Case and the Fareham position is shown in Paragraph 35 (JO) (sub-paragraph 61) which states:-
- “The statutory framework recognises that a development plan may be comprised of a number different development plan documents. Sections 19(2)(h) of the 2004 Act provides that a local planning authority preparing a development plan document must have regard to any other local development document (which will include a development plan document). Thus where, as here, the Defendant has an adopted development plan document in the form of a Core Strategy, it must have regard to that in preparing a subsequent development plan document. The inspector, on examination, will need to ensure, amongst other things, that that requirement has been met (see section 20(5)(2) of the 2004 Act).”**
- 2.17 Regulations 8(4) and (5) of section 38(5) of the Planning and Compulsory Purchase Act 2004 provide:-

“(4) Subject to paragraph (5) the policies contained in the local plan must be consistent with the adopted development plan

(5) When a local plan contains a policy that is intended to supercede another policy in the adopted development plan, it must state that fact and identify the superceded policy.”

- 2.18 In the Woking position, the DPDs were in accord but the objectively assessed need had not been addressed. In Fareham, there is a discrepancy between the figures in the Core Strategy and LPP3. The Council is relying on “ring fencing” the Plans as it is evident that it has not had regard to the Core Strategy. This is not the same as the Gladman Case.
- 2.19 The difference is made clear by reference to paragraph 35 (sub-paragraph 66). There is no need to ‘stop’ the process while the assessment of housing provision takes place. This is not the position in Fareham. There is a ‘shortfall’ now. Only the full extent of the ‘shortfall’ is uncertain. This is a matter for Fareham Borough and not PUSH as there has been no attempt to address the shortfall in the sub-region.
- 2.20 I do not accept the relevance of the Gladman Case. I believe that the Gallagher Homes Case was more relevant as set out in paragraph 35 (sub-paragraph 66).
- 2.21 The difference between the Cases is made clear in paragraph 46 where the Joint Opinion refers to the “full objectively assessed needs” and makes no reference to the “shortfall”.
- 2.22 The Joint Opinion has not addressed the actual position.

