

FAREHAM

BOROUGH COUNCIL

Fareham Local Plan Part 2: Development Sites and Policies (LP2) - Examination

Fareham Local Plan Part 3: The Welborne Plan (LP3) – Examination

Council's response to Inspector's Question 1

Following the Inspector's question the Council has sought legal advice on the implications of the judgment in the case of Gladman Development Limited v Wokingham Borough Council [2014] EWHC 2320 (Admin) on the two plans being examined and their relationship to the adopted Core Strategy of August 2011.

That legal advice accompanies this note. It is consistent with the Council's view that the points made in the judgment which are highlighted in the Inspector's question are applicable in the case of the Fareham Local Plan Part 2 and Fareham Local Plan Part 3.

IN THE MATTER OF THE FAREHAM LOCAL PLAN

JOINT OPINION

Introduction

1. We are asked to advise Fareham Borough Council (“the Council”) on an issue raised by the Inspector¹ appointed to examine Parts 2 and 3 of its emerging Local Plan in a question dated 16 July 2014 (set out at paragraph 12 below). The issue concerns the proper approach to objectively assessed needs in the light of the recent judgment of Lewis J in *Gladman Development Ltd v Wokingham Borough Council* [2014] EWHC 2320 (Admin). Our views are set out below and summarised in the Conclusions section at the end of this Joint Opinion.

Factual background

2. The Fareham Local Plan is intended to consist of three parts, namely: (i) Local Plan Part 1: Core Strategy (“the Core Strategy”); (ii) Local Plan Part 2: Development Sites and Policies (“the DSP”); and (iii) the Welborne Plan.
3. The Core Strategy, together with the saved policies from the Fareham Borough Local Plan Review 2000 and the Hampshire Minerals and Waste Plan 2013, forms the current development plan for Fareham Borough. The Core Strategy was adopted by the Council on 4 August 2011 (i.e. prior to the publication of the NPPF in March 2012). It seeks to identify and make provision for development needs to 2026. Policy CS2 makes provision for housing within the Borough and Policy CS13 makes provision for the development of a Strategic Development Area to the north of Fareham, following the adoption of an Area Action Plan (i.e. the Welborne Plan) and the preparation of a comprehensive masterplan for the development. The housing target under Policy CS13 is “6,500 – 7,500

¹ Inspector David Hogger BA MSc MRTPI MCIHT

dwellings, unless it is found that this level of housing cannot be delivered without adversely affecting the integrity of protected European conservation sites". We are instructed that the housing target under Policy CS2 "came from the South Hampshire Strategy and South East Plan" and that the housing target under Policy CS13 was a "refinement of the original 10,000 figure in the South Hampshire Strategy and South East Plan, refined as a result of subsequent technical work on site capacity".

4. The DSP combines the draft Site Allocations Plan and draft Fareham Town Centre Area Action Plan. It seeks to set out the Council's approach to managing and delivering development identified in the Core Strategy (together with the additional requirements set out in the South Hampshire Strategy²) for the Borough to 2026, except for the area covered by the Welborne Plan. Once adopted, it will replace all remaining saved policies in the Fareham Borough Local Plan³.
5. The Welborne Plan is a site-specific plan which aims to make more specific provision for the development envisaged by Core Strategy Policy CS13. It has been prepared within the framework of that Policy, though the intended housing delivery for that area is reduced by Welborne Plan Policy WEL3 to approximately 6,000 dwellings as a result of work undertaken after adoption of the Core Strategy to assess the residential development capacity of the site.
6. Both the DSP and the Welborne Plan were submitted to the Secretary of State for independent examination on 23 June 2014.
7. In order to understand housing needs and to comply with the requirements of paragraph 159 of the NPPF, the Council and other local planning authorities in South Hampshire have prepared the South Hampshire Strategic Housing Market Assessment ("the SHMA"), published in January 2014. This document seeks to provide evidence about the objectively assessed needs of the wider housing market area of South

²The South Hampshire Strategy, approved by the Partnership for Urban South Hampshire in October 2012, is not part of the development plan but provides guidance for local plan preparation.

³ And also Core Strategy Policy CS19: Gypsies, Travellers, and Travelling Showpeople Population.

Hampshire. We are instructed that such an exercise was not undertaken in relation to the South Hampshire Strategy (October 2012).

8. The SHMA does not seek to address the extent to which, or the location in which, the objectively assessed housing needs it identifies should be met. Those tasks are intended to be achieved by a review of the South Hampshire Strategy to 2036 (for which the SHMA will, of course, be a key part of the evidence base). The timetable for this work is set out in Reports to the PUSH Joint Committee dated 25 March and 24 June 2014, both of which envisage adoption of the revised Strategy in early 2016.
9. The Council intends that there will be an early review of the Fareham Local Plan, timed to follow the adoption by PUSH of a revised South Hampshire Strategy. The DSP submission draft addresses this issue at paragraphs 1.9 to 1.11 as follows:
 - “1.9 PUSH has committed to undertake a review and update of the South Hampshire Strategy, to take account of the most up-to-date background evidence, including the Strategic Housing Market Assessment (SHMA), and to extend the timeline of the Strategy to 2036. The report to the PUSH joint committee on the 25th March confirmed that work on the update would start in April 2014, with publication of the final Strategy predicted for early 2016.
 - 1.10 The Council recognises the need for an early review of the Local Plan following adoption of the Development Sites & Policies Plan to extend the time horizon beyond 2026, in line with the Welborne Plan, to 2036. The review of the South Hampshire Strategy to 2036 will inform the early review of Fareham’s Local Plan. This is considered to be the most sound and robust approach to taking account of new evidence, including the SHMA whilst ensuring the Council fulfils the Duty to Cooperate.
 - 1.11 The Council’s commitment to an early review of the Local Plan is reiterated in the Local Development Scheme.”
10. A footnote to paragraph 1.9 provides a link to the 25 March Report. A footnote to paragraph 1.11 provides a link to the Council’s Local Development Scheme (Revised February 2014), section 4.2 of which addresses “Monitoring and Review”.
11. The Welborne Plan submission draft also makes reference to an early review of the Local Plan following the review of the South Hampshire Strategy (see paragraph 1.16, 1.22, 1.29).

12. On 11 July 2014 the Inspector appointed to undertake the examination of the DSP and Welborne Plan held a Procedural Meeting with the Programme Officer and Council Officers. On 16 July 2014, as a result of discussions at that meeting, the Inspector raised the following written question:

“Inspector’s Question 1 for the Council

Gladman Development Limited v Wokingham Borough Council

In the above judgement dated 11 July 2014 (case No: CO/1455/2014) Mr Justice Lewis concluded in paragraph 60 that ‘an Inspector assessing the soundness of a development plan document dealing with the allocation of sites for a quantity of housing which is needed is not required to consider whether an objective assessment of housing need would disclose a need for additional housing’.

In paragraph 62 he states that ‘It may be that the earlier development plan document needs up dating, and may need to make further and additional provision for development in the future. There is, however, nothing in the statutory framework to suggest that a development plan document ... cannot be adopted simply because another development plan document, such as the Core Strategy, may need to be updated to include additional provision, for example additional housing’.

Finally in paragraph 65 he concludes that the NPPF ‘does not require a development plan document which is dealing with the allocation of sites for an amount of housing provision agreed to be necessary to address, also, the question of whether further provision will need to be made’.

In light of this Judgement a brief response is invited from the Council with regard to the implications of the Judgement on the content of the two plans being examined and their relationship to the adopted Core Strategy of August 2011. Any such response should be received by the Programme Officer by midday on Friday 8 August.”

Legal and policy framework

The Planning and Compulsory Purchase Act 2004

13. Part 2 of the Planning and Compulsory Purchase Act 2004 (“the PCPA”) established a system of local development planning in England. By section 13(1) local planning authorities are under a duty to keep under review matters which may be expected to affect the development of their area or the planning of its development. By section 17(6) local planning authorities must keep under review their local development documents, having regard to the results of any reviews under section 13. Local authorities are also under a duty pursuant to section 15(8) to revise their local development schemes at such

time as they consider appropriate, or when directed to do so by the Secretary of State. Section 26 makes provision for such revisions.

14. The preparation of local development documents is provided for by section 19 of the PCPA. Pursuant to section 19(2), in preparing a development plan document or any other local development document, a local planning authority must “have regard to” certain matters including national policies and advice contained in guidance issued by the Secretary of State (s.19(2)(a)) and any other local development document which has been adopted by the authority (s.19(2)(h)).
15. All development plan documents must be submitted to the Secretary of State for independent examination, as set out in section 20 of the PCPA. By section 20(5)(b), one of the three purposes of the independent examination is to determine whether the development plan document is “sound”. The other two purposes of the examination are to ensure that the local planning authority has met the requirements of various statutory provisions, including section 19 of the PCPA (subsection (5)(a)) and the authority's duty under section 33A of the PCPA to co-operate with other authorities when preparing its development plan documents (subsection (5)(c)).
16. By section 23, the local planning authority's powers of adoption of a document are contingent on the result of the independent examination.
17. There is no requirement that development plan documents be in general conformity⁴ with each other and, by section 38(5) of the PCPA, if to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.

The Town and Country Planning (Local Planning) (England) Regulations 2012

⁴ Compare the requirement of general conformity with regional strategies and spatial development strategies under section 24.

18. The Town and Country Planning (Local Planning) (England) Regulations 2012 (“the 2012 Regulations”) make further provision for the system established by Part 2 of the 2004 Act. Regulations 5 and 6 make provision in relation to local development documents and define local plans.
19. Regulations 8(4) and (5) are relevant to section 38(5) of the PCPA so far as local plans are concerned, providing as follows:
 - “(4) Subject to paragraph (5), the policies contained in a local plan must be consistent with the adopted development plan.
 - (5) Where a local plan contains a policy that is intended to supersede another policy in the adopted development plan, it must state that fact and identify the superseded policy.”
20. Part 6 of the 2012 Regulations makes detailed provision for, amongst other things, the preparation and independent examination of local plans.

The National Planning Policy Framework (“NPPF”) and the Planning Practice Guidance (“PPG”)

21. The NPPF sets out the Government’s planning policies for England and how these are expected to be applied. At its heart is paragraph 14, which articulates a presumption in favour of sustainable development. For plan-making, this emphasises that local plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless: (i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or (ii) specific policies in the NPPF (examples of which are given at footnote 9 to paragraph 14) indicate development should be restricted.
22. This emphasis on seeking to address and meet objectively assessed needs is also found in the third core planning principle at paragraph 17, which states that planning should:
 - “proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating

sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities;”.

23. The same emphasis is found in Chapter 6, entitled “delivering a wide choice of high quality homes”. The first bullet of paragraph 47 states that to “boost significantly the supply of housing, local planning authorities should”:

“use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;”

24. Paragraph 12 notes that it is “highly desirable that local planning authorities should have an up-to-date local plan” and paragraphs 150 to 185 provide detailed guidance on plan-making. Paragraph 151 notes that:

“Local Plans must be prepared with the objective of contributing to the achievement of sustainable development. To this end, they should be consistent with the principles and policies set out in this Framework, including the presumption in favour of sustainable development.”

25. Paragraph 154 goes on to note that local plans should be “aspirational but realistic”. There is an emphasis from paragraph 158 onwards on using a proportionate evidence base. Paragraph 158 itself provides:

“Each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market and economic signals.”

26. Paragraph 159 addresses this in the context of housing:

“Local planning authorities should have a clear understanding of housing needs in their area. They should:

- prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:
 - meets household and population projections, taking account of migration and demographic change;

- addresses the need for all types of housing, including affordable housing and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes); and
- caters for housing demand and the scale of housing supply necessary to meet this demand;
- prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period."

27. Paragraphs 178 to 181 make provision for planning strategically across local boundaries, complementing the duty to co-operate under section 33A of the PCPA.

28. Paragraph 182 provides the tests for "soundness" of local plans:

"The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is "sound" - namely that it is:

- **Positively prepared** -the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** -the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- **Effective** -the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with national policy** -the plan should enable the delivery of sustainable development in accordance with the policies in the Framework."

29. The status of the guidance on soundness in the NPPF was considered by Lindblom J in *Grand Union Investments Ltd v Dacorum Borough Council* [2014] EWHC 1894 (Admin) at paragraph 59:

"But the guidance as to "soundness" in the NPPF is policy, not law, and it should not be treated as law. As Carnwath L.J., as he then was, said in *Barratt Developments Plc v The City of Wakefield Metropolitan District Council* [2010] EWCA Civ 897 (in paragraph 11 of his judgment), so long as the inspector and the local planning authority reach a conclusion on soundness which is not "irrational (meaning perverse)", their decision cannot be questioned in the courts, and the mere fact that

they have not followed relevant guidance in national policy in every respect does not make their conclusion unlawful. Soundness, he said (at paragraph 33) was "a matter to be judged by the inspector and the local planning authority, and raises no issue of law, unless their decision is shown to have been "irrational", or they are shown to have ignored the relevant guidance or other considerations which were necessarily material in law"."

30. Annex 1 to the NPPF concerns implementation. Paragraph 213 notes that plans adopted prior to the NPPF may need to be revised to take into account its policies.
31. From 6 March 2014, the NPPF has been supplemented by the more detailed guidance in the PPG. Paragraph 8 of the PPG section on Local Plans notes that "Local Plans may be found sound conditional upon a review in whole or in part within five years of the date of adoption". Paragraph 27 of the PPG section on Housing and Economic Land Availability Assessment notes that "Local Plans can pass the test of soundness where local planning authorities have not been able to identify sites or broad locations for growth in years 11-15".

Advice on the Inspector's Question

Issue 1: The proper approach to objectively assessed needs

32. The DSP and Welborne plan do not seek to identify the full, objectively assessed needs for market and affordable housing for the purposes of paragraph 47(1) of the NPPF and that is not their function.
33. For the purposes of this Joint Opinion we will assume that the Council is not currently able to specify a needs figure for its area (given the facts set out above). In our opinion that does not mean the DSP and Welborne plan are unsound as a result of this for the reasons summarised below. The recent decision in the *Gladman Development* case is highly relevant to this issue, as the Inspector rightly recognised in his question to the Council.
34. If a development plan document deals with the assessment of the need for housing, then paragraph 47 of the NPPF will generally require full, objectively assessed needs to be

identified and then a distinct assessment to be made as to whether (and, if so, to what extent) other policies dictate or justify constraint: see *Gallagher Homes Ltd v Solihull MBC* [2014] EWHC 1283 (Admin) at [94] – [99].

35. The recent decision in *Gladman Development* confirms, however, that such an approach is not required where a particular development plan document is not seeking to deal with the assessment of the need for housing: see Lewis J in *Gladman Development* at [60]. That case concerned a challenge to Wokingham Borough Council’s Management Development and Delivery Local Plan (“the MDD”). The MDD made provision for needs which had already been identified in a pre-NPPF Core Strategy. Neither Wokingham Borough Council, nor the Inspector examining the MDD, determined whether the number of houses allocated in the MDD would be sufficient to ensure that objectively assessed needs for housing would be met. Lewis J found that such a determination was not necessary. His conclusions on this issue are worth setting out in full:

“60. In my judgment, an inspector assessing the soundness of a development plan document dealing with the allocation of sites for a quantity of housing which is needed is not required to consider whether an objective assessment of housing need would disclose a need for additional housing. I reach that conclusion for the following reasons.

61. First, the statutory framework does not require such an approach. The statutory framework recognises that a development plan may be comprised of a number different development plan documents. Section 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)(a) of the 2004 Act).

62. The structure of the 2004 Act is, therefore, consistent with a situation where one development plan document is giving effect to another earlier such document. It may be that the earlier development plan document needs updating, and may need to make further and additional provision for development in the future. There is, however, nothing in the statutory framework to suggest that a development plan document, such as the MDD

here, cannot be adopted simply because another development plan document, such as the Core Strategy, may need to be updated to include additional provision, for example additional housing.

63. Secondly, the Framework properly interpreted, and read against the statutory background, does not, in my judgment, require the result contended for by the Claimant. The Framework sets out the government's policies on planning in England. It provides guidance. It is written in a way which is intended to be accessible to the reader as is clear from the foreword. The Framework offers guidance on what it describes as local plans. These are, or at least include, the development plan. The development plan is, however, comprised of a series of development plan documents adopted under the 2004 Act as the glossary to the Framework makes clear. One should, therefore, be wary about assuming that the guidance in relation to one particular development plan document necessarily applies to all other development plan documents simply because the Framework refers to "local plans" without differentiating between different development plan documents for these purposes.
64. Where a development plan document is intended to deal with the assessment of the need for housing, then, the provisions of the Framework material to housing need will be a material consideration. A local planning authority dealing with the question of the amount of housing needed for its area will need to have regard to paragraph 47 of the Framework. The provisions governing a local plan – that is a development plan document - dealing with the assessment of housing need would have to have regard to paragraphs 158 and 159 of the Framework. Any examination of that local plan, that is that particular development document, would need to have regard in that context to paragraph 182 of the Framework.
65. Properly read, however, the Framework does not require a development plan document which is dealing with the allocation of sites for an amount of housing provision agreed to be necessary to address, also, the question of whether further housing provision will need to be made.
66. Thirdly, in my judgment, the approach advocated by the Claimant would be likely to run counter to the aims of the Framework and lead to results that were not intended. On the facts of the present case, for example, the position taken by the inspector is that a figure of at least 13,230 dwellings will be required and the MDD, with modifications, would address the allocation of that amount of housing in a sound way. On the Claimant's case, the Defendant cannot prepare, and an inspector cannot consider the soundness of, a development plan document dealing with the allocation of necessary housing until further steps are taken to identify whether additional housing is required. The process of adopting the MDD allocating sites for required housing would have to stop while a strategic housing market assessment is carried out or equivalent data obtained. If additional housing were to be

needed, then either the scope of the proposed MDD would have to be enlarged to include the larger figures and have that MDD supersede the Core Strategy figure or a development plan document dealing with changes to the Core Strategy would need to be prepared. It is difficult to see that that interpretation is consistent with the Framework which seeks to encourage the development of development plan documents and to ensure that such documents are in place to guide decisions on development.

67. Fourthly, in reality, the approach of the Claimant would involve using the perceived need to comply with the Framework as a way of compelling the Defendant to carry out a full, objective assessment of its housing needs to discover if additional housing provision were required. The Defendant is, however, already under a statutory duty to review matters which may be expected to affect the development of their area (section 13(1) of the 2004 Act). The Defendant is also under a duty to keep the development plan documents under review having regard to the results of any such review (section 17(6) of the 2004 Act). The Defendant in the present case is, as the evidence establishes, in the process of preparing a strategic housing market assessment which may lead to a review of the housing provision identified as necessary. The use of the Framework as a means of compelling the Defendant to carry out of such reviews is not necessary. In those circumstances, the interpretation of the Framework advanced by the Claimant has less force. The Claimant's interpretation is not needed to ensure that the local planning authority performs a review of its housing need but it would prevent them from adopting a development plan document which allocates sites for housing need already established.
68. Finally, this conclusion is, in my judgment, consistent with the decision in *Gallagher Homes Ltd*. There, Hickinbottom J. was dealing with a development plan document which did involve the assessment of housing need and proposed a figure of 11,000 new dwellings in the relevant period as appears from paragraph 35 of the judgment. It was in that context that Hickinbottom J. considered that the inspector erred in his approach to the examination of that development plan document in not addressing fully the issue of what was the objectively assessed need for housing. This case is different. The inspector here was not examining a development plan document assessing housing provision. He was examining a plan which proposed site allocations for housing which, as a minimum, would contribute towards the agreed housing need of the area.
69. For those reasons, in my judgment, the inspector in the present case was not required by reason of the Framework to consider an objective assessment of housing need in order to assess whether this development plan document was sound."

36. The *Gladman Development* decision was handed down on 11 July 2014, the day of the Inspector's Procedural Meeting. We do not know whether the Claimant is seeking permission to appeal. However, the reasoning of Lewis J at paragraphs [60] – [69] is clear, cogent and compelling as it stands. Absent any contrary decision, we turn to its implications for the Welborne Plan and DSP on the basis that it represents the correct interpretation of the statutory scheme and NPPF in law. We address the Welborne Plan and the DSP in turn.
37. The Welborne Plan is very clearly a development plan document which does not assess housing provision for the Council's area, but merely deals with the allocation of a site for a quantity of housing which has been identified as needed in the Core Strategy. As noted above, it has been prepared within the framework of Core Strategy Policy CS13, but with the intended housing delivery having been reduced by Welborne Plan Policy WEL3 as a result of work undertaken after adoption of the Core Strategy to assess the residential development capacity of the site. In such circumstances, applying the *Gladman Development* principles, the soundness of the Welborne Plan is not contingent on identifying the full, objectively assessed needs for market and affordable housing for the purposes of paragraph 47(1) of the NPPF.
38. As for the DSP, section 5 of the submission draft makes clear that its allocations are founded on the housing requirements for the Borough (outside Welborne) set by Core Strategy Policy CS2. It is clear that mere allocation of the Core Strategy requirements would also fall within *Gladman Development* principles as being compliant with the relevant framework.
39. The DSP, however, also seeks to uprate the housing requirements based on the October 2012 update to the South Hampshire Strategy (see paragraph 5.174 of the submission draft) and is informed by other post-Core Strategy evidence. This raises a potential question as to whether the DSP should be viewed as a development plan document which in some respects supersedes the Core Strategy and itself determines the housing provision for the area.

40. On analysis, we consider this not to be the case and the more appropriate analysis is that the DSP merely allocates sites for a quantity of housing which is needed. The uprating in the DSP recognises that the quantity of housing that is said to be needed is higher than that set out in the Core Strategy, but the DSP does not seek to *determine* the housing provision for the area. This is a task which was carried out by the Core Strategy, and it is a task which will be updated in the early review of the Fareham Local Plan.
41. The main purpose of the DSP is to make allocations so as to bring forward the Core Strategy (albeit updated) in an orderly and plan-led manner so as to avoid a policy vacuum pending the intended revision of the South Hampshire Strategy. It also strikes us that it would be a surprising result if the DSP could lawfully allocate strictly in accordance with the Core Strategy but could not also uprate those figures to allocate a quantum which is likely to be needed, based on the most up to date evidence (including the SHMA). Accordingly, we also consider that the soundness of the DSP is not contingent on identifying the full, objectively assessed needs for market and affordable housing for the purposes of paragraph 47(1) of the NPPF.

Issue 2: the early review of the Local Plan

42. Even if either the DSP or the Welborne Plan were found to be assessing needs, the question would arise as to whether they might still be considered sound in the absence of an identification of a full and up-to-date, objectively assessed needs figure. This would ultimately depend on an assessment of the full evidence, but it seems to us that the Council's commitment to an early review of the Fareham Local Plan is of clear relevance in the light of the recent judgment of Lindblom J in *Grand Union Investments Ltd v Dacorum Borough Council* [2014] EWHC 1894 (Admin).
43. In the *Grand Union* case, Lindblom J upheld the decision of Dacorum Borough Council to adopt its Core Strategy, despite the fact that it had been required to identify its full, objectively assessed needs but had failed to do so. The Inspector had recognised this defect, but had nonetheless decided that the Core Strategy (as modified by a main

modification) was sound because of the Council's intention to adopt an early review by 2017/18. This was a view that the High Court considered to be "pragmatic, rational and justified" (see paragraph 69).

44. Applying the approach adopted by the High Court in *Grand Union*, in our opinion the Council's commitment to an early review, timed to follow the adoption by PUSH of a revised South Hampshire Strategy, would strongly support the conclusion that any potential complaint of unsoundness said to arise from a failure to identify full, objectively assessed needs can be satisfactorily addressed by that commitment, such that the plan-making process does not need to be aborted or suspended pending further work on the Council's needs. Such a conclusion is also supported by the passages of the PPG set out at paragraph 31 above.

Conclusions

45. For the reasons set out above, we have no doubt that the Inspector was correct to draw attention to the *Gladman Development* case in his question to the Council and that it is relevant to the process as a matter of law. In accordance with the approach set out in *Gladman Development*, we consider that the soundness of the Welborne Plan and DSP is not contingent on identifying the full, objectively assessed needs for market and affordable housing for the purposes of paragraph 47(1) of the NPPF. We consider that both documents merely deal with the allocation of sites for a quantity of housing which has been identified as needed, rather than dealing with the assessment of the need for housing.
46. Even if we were wrong in our analysis of this first issue, we nonetheless consider that the Council's commitment to an early review of the Fareham Local Plan would strongly support a conclusion that any potential unsoundness caused by a failure to identify full, objectively assessed needs would be addressed by that commitment. This would be consistent with the approach adopted by the High Court in *Grand Union*. We also note that, as set out at paragraph 31 above, the PPG provides support for local plans being found sound conditional upon early reviews.

47. We note in passing that the DSP submitted for examination is intended to provide for an over-delivery of housing, as against the Core Strategy requirements, in the early stages of the plan (see paragraph 5.178 of the submission draft). In practice, this means that there would in fact be unlikely to be any material undersupply across the plan period if the DSP were to be adopted on this basis and the early review then carried out (see paragraphs 76-77 of the *Grand Union* judgment on this issue).
48. We also consider that the Council's approach is generally in accordance with the NPPF in seeking to provide for a plan-led approach and seeking to avoid a policy vacuum while the work needed to understand full, objectively assessed needs is undertaken through the review of the South Hampshire Strategy. This enables the Council to proceed with a properly informed approach to that issue under the early review of the Local Plan, but in the meantime to put in place important elements of the development plan for its area.
49. We understand that the Council may provide this Joint Opinion for consideration at the independent examination of the DSP and Welborne Plan and confirm that we have no objection to this being done.
50. Those instructing us should not hesitate to get in touch if they would like further assistance on any issue.

JAMES STRACHAN QC

NED HELME

39 Essex Street Chambers, London, WC2R 3AT

7 August 2014